

*Edward the*  
**The fyrste dyaloge in Englysh**

*the* / with newe addycyons.



# Here after fo

loweth the fyrste Dyaloge in  
Englyshe/byt wyrt a Doc=  
toure of Dyuynyte/and a  
Student in the Lawes  
of Englāde. of the groundes of  
the sayd Lawes, and of con=  
science/newly correctyd:  
and eft sones Enpryn=  
ted: with newe  
addycyons.

By Christoph. St Germain Student of the  
Inner Temple. *Dugl. Dig. Jurid. p. 59.*

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*and againe with the Second Dialogue  
in 1607.*



Doctoure of dyuynyte that  
was of great acquayntaun/  
ce / and famyllyartytie With  
a Student in the Lawes of  
Englande sayde thus Vnto  
hym / I haue had great desyre of longe tyme  
to knowe wherupon the lawe of Englan/  
de is grounded / but bycause moche parte of  
the lawe of Englande is wyten in the fren  
che tonge / Therefore I can not through my  
ne owne studyc attayne to the knowlege  
therof: for in that tonge I am no thyng ex  
perte. And bycause I haue alwayes foun/  
de the a faythfull frende to me in all my bu  
synes: Therefore I am bolde to come to the  
byfore any other to know thy mynde what  
be the very groundes of the lawe of Eng/  
lande as thou thynkest. (Student) that  
wolde aske a great leasure / and it is also a/  
boue my cūnyng to do it. Neuerthelesse yf  
thou shalt not thynke that I wold wylful  
ly refuse to fulfill thy desyre: I shall with  
good wyl do that in me is to satysfye thy  
mynde / but I pray the that thou wylte fyr/  
ste shewe me somewhat of other lawes that  
pertayne most to this mater: and that Doc/  
tours treat of howe lawes haue bygon.

Dyaloge.

a.ii.

### The fyrste

And then I Wyll gladly shewe the as me  
thynketh what be the grounides of the lawe  
of Englande. ¶ Doctoure) I Wyll With  
good Wyll do as thou sayste: wherfore thou  
shalt vnderstande that Doctours treate of  
foure lawes / the whiche as me semyth per-  
tayne moste to this mater. The fyrste is the  
lawe eternall. The seconde is the lawe of  
nature of reasonable creature / the which as  
I haue harde saye is called by them that be  
lernyd in the lawe of Englande the lawe of  
reason. The thyrde is the lawe of god. The  
fourth is the lawe of man. And therefore I  
Wyll fyrste treate of the lawe eternall.

### ¶ Of the lawe eternall. The fyrste Chapytre.



Doctoure) lyke as ther is in  
euery artyfycer a reason of  
suche thynges as are to be  
made by his crafte / so lyke  
wyse it behoueth that i eue-  
ry gouernour there be a rea-  
son & afore sayght in the gouernour of suche  
thynges as shall be orderyd & done by hym:  
to them that he hath the gouernaunce of. And

for as moche as almyghtye god is the crea-  
 tour and maker of all creatures / to the whi-  
 che he is compared as a Workeman to his  
 worke. And is also the gouernour of all de-  
 des & mouynges that be founde in any crea-  
 ture. Therfore as the reason of the wysdom  
 of god in asmoche as creatures be create by  
 hym hath the reason & foresyght of all craf-  
 tes & Markes that haue ben or shal be / so the  
 reason of the wysdom of god mouynge all  
 thyngs by hym made to a good ende / optey-  
 neth the name & reason of a lawe / and that  
 is called the lawe eternall. And this lawe  
 eternall is called the fyrste lawe / and it is  
 well called the fyrste / for it was byfore all  
 other lawes. And all other lawes be dery-  
 ued of it / wherupō seynt Augustyn sayth  
 in his fyrste booke of fre arbytrement that in  
 temporall lawes no thyng is ryght wys-  
 ne lawful / but that the people haue deryu-  
 ed to them out of the lawe eternall. Wherfo-  
 re enery man hath ryght & tytle to haue that  
 he hath ryght wysly of the ryght wyse Ju-  
 gement of the fyrste reason / whiche is the  
 lawe eternall. ¶ Student) but howe may  
 this lawe eternall be knowen / for as the a-  
 postle wytteth in the. v. chapytre of his fyr-

## The fyrste

ste epystle to the Corynthyens. Que sunt dei  
nemo scit nisi spiritus dei. That is to say no  
man knoweth what is in god / but the spy-  
rite of god / wherefore it seemeth that he ope-  
nyth his mouth in to heuen that attempteth  
to know it. ¶ (Doctoure) this lawe eternall  
no man may knowe as it is in it selfe / but  
only blessed soules that se god face to face /  
but almyghty god of his goodnes sheweth  
of it as moche to his creatures as is necessa-  
rye for them / for els god shuld bynde his cre-  
atures to a thyng impossible: whiche may  
in no wyse be thought in hym. Therefore it  
is to vnderstande that thre maner of wayes  
almyghty god maketh this lawe eternall  
known to his creatures reasonable. Fyrste  
by the lyght of natural reason. Seconde by  
heuely reuelacyon. Thyrde by the ordre of  
a pryncce: or of any other secundarie gouerno-  
r that hath power to bynde his subgettes to a  
lawe. And whan the lawe eternall or the  
wyll of god is known to his creatures re-  
asonable by the lyght of naturall vndersta-  
ndynge / or by the lyght of naturall reason /  
then it is called the lawe of reason. And  
when it is shewed by heuely reuelacion in  
suche maner as hereafter shall appere / then

it is called the lawe of god. And when it is shewed vnto hym by the ordie of a pryncce / or of any other secundarye gouernoure that hath power to set a lawe vpon his subgettes / then it is called the lawe of mā: though origynallye it be made of god / for lawes made by man / that hathe receyued therto power of god be made by god. Therefore the sayd thre lawes: that is to saye / the lawe of reason / the lawe of god / & the lawe of man the which haue seuerall names after the manner as they be shewed to man / be called in god one lawe eternall. And this is the lawe of whom it is wytten. Proverbiorum octauo / Where it is sayd Per me reges regnant et legū conditores iusta discernūt: that is to say / by me kyniges Reygn / and makers of lawes descerne the trewth. And this suffyeth for this tyme of the lawe eternall.

**O**f the lawe of reason / the whiche by Doctours is called the lawe of nature of resonable creature. The. ii. Chapit.

**D**octours) fyrste it is to be vnderstande / that the lawe of nature maye be consyderyd in two maners / that is to saye /

The seconde  
generally and specyally / When it is consy-  
deryd generally / then it is referryd to all cre-  
atures / as well resonable as vnrasonable /  
for all vnrasonable creatures lyue vnder  
a certayne reule to them gyuen by nature /  
necessarye for them to the conseruacyon of  
theyr beinge / but of this lawe it is not our  
intent to treat at this tyme . The lawe of  
nature specyally consyderyd : Whiche is also  
called the lawe of reason pertayneth onely  
to creatures resonable that is man / Whiche  
is create to the ymage of god . And this law  
ought to be kept as well amonge Jewes &  
gentyls / as amonge crysten men . And this  
lawe is alway good & ryght wyse styring  
& enclynnyng a man to good / & abhorryng  
euyl : & as to the orderynge of the dedes of mā  
it is pferryd before the lawe of god . And it  
is wyten i the herte of euery man teachynge  
hym what is to be don & what is to be fled .  
And bycause it is wyten in the herte / ther-  
fore it may not be put a waye / ne it is neuer  
chaūgeable by no dyuersyte of place ne ty-  
me . And therefore agaynst this lawe prescri-  
pcion statute nor custome may not preuaile  
and yf any be brought in agaynst it they  
be no prescripcions statutes nor customes /

but thyngs voyd & agaynst iustyce. And al  
other lawes as wel the lawes of god / as to  
the act of me as other be grouded therupō.  
¶ Student) syth the lawe of reason is wy-  
ten in the herte of cucty man / as thou haste  
sayd byfore techyng hym what is to be don  
and what is to be fled / and the which thou  
sayste maye neuer be put oute of the herte /  
what nedyd it then to haue any other lawe  
brought in to ordre the act and dedes of the  
people. ¶ Doctoure) though the lawe of re-  
ason maye not be chaunged nor hollye put  
away : neuertheles byfore the lawe wyten  
it was greatly lette and blynded by euyl  
customes & by many synes of the people be-  
syde the orygynall synne / in so moche that  
it myght hardly be discernyd what was ry-  
ght wyse and what was vnyght wyse / &  
what good and what euyl / Wherefore it  
was necessarye for the good ordre of the peo-  
ple to haue many thyngs added to the lawe  
of reason as well by the Church : as by secu-  
lar prynces accordyng to the maners of the  
countre and of the people / Where such addy-  
cyons shuld be excersysed. And this lawe  
of reason dyfferyth fro the lawe of god in  
two maners / for the lawe of god is gauen

## The seconde

by reuelacyon of god / and this lawe is gye  
uen by a naturall lyght of vnderstādyng  
And also the lawe of god orderyth a man  
of it selfe by a nyghe waye to the felicytie  
that euer shall endure. And the lawe of rea  
son orderyth a man to the felicytie of this  
lyfe. ¶ Student) but What be tho thynges  
that the lawe of reason techeth to be done /  
and What to be fled / I pray the shew me.  
¶ Doctoure) the lawe of reason techyth that  
good is to be loued / and euyl is to be fled /  
Also that thou shalte do to another y<sup>t</sup> thou  
woldest another shuld do to the / also y<sup>t</sup> we  
may do no thyng agaynst trouthe. Also that  
a man muste lyue peacefully with other.  
That iustyce is to be don to euery man: and  
that wronge is not to be done to any man.  
And also that a trespasser is worthy to be  
punysshed and suche other / of the whiche fo  
lowe dyuers other secundarye comaunde  
mentes / the whiche be as necessarye conclu  
syons derpyed of the fyrste / as of that co  
maūdemēt that good is to be belouyd it fo  
loweth that a man shall loue his benefac  
tour: for a benefactour i that he is a benefac  
tour includeth in hym a reason of goodnes  
for els he ought not to be called a bñfacto<sup>r</sup> /

that is to say a good doer: but an euill doer.  
 And so in that he is a benefactour / he is to  
 be belouyd in all tymes / and in all places.  
 And this lawe also suffereth many thyn/  
 ges to be done / as that it is lawfull to put  
 a waye force with force. And that it is law  
 full for every man to defende hym self and  
 his goodes agaynst an vnlawfull power.  
 And this lawe renneth with euery mānes  
 lawe / and also with the lawe of god as to  
 the dedes of man / & muste be alwayes kept  
 and obseruyd / & shall alway declare what  
 ought to folowe vpon the generall redres  
 of the lawe of man / & shall restrayne them  
 yf they be in any thyng contrary vnto it.  
 And here it is to be vnderstāde / that after  
 some men / that lawe wherby all thynges  
 were i cōmon was neuer of the lawe of rea  
 son / but onely in the tyme of extreme neces/  
 sityte. For they saye that the lawe of reason  
 may not be chaunged / but they say it is euy  
 dent that y<sup>e</sup> lawe wherby all thyngi shuld  
 be in cōmen is chaūged / wherfore they con/  
 clude that it was neuer the lawe of reason.

**O**f the lawe of god.

The.iii. Chapytre.

Dyaloge.

b.ii.

The thyrde



Octoure) the lawe of god is a certayne lawe gyuen by reuelacion to reasonable creature shewyng hym the Wyl of god Wyllynge / that creature reasonable to be bounde to do a thyng or not to do it for optaynyng of the felycyte eternal And it is sayde (for the optaynyng of the felycyte eternall) to exclude the lawes shewed by reuelacion of god for the politycall reule of the people the whiche be called Iudycials: for a lawe is not pprly called the law of god bycause it was shewyd by reuelacion of god / but also bycause it directyth a man by the neryst waye to the felycyte eternall as ben the lawes of the olde Testament that be called morales / & the lawe of the Euangelystes: the which were shewyd in moch more excellent maner: then the law of the olde Testament was: for that was shewyd by the medycyon of an Angell But the lawe of the Euangelyst was shewyd by the medycyon of our lorde Ihesu crist god & man / and the lawe of god is alway ryght wyse and iuste / for it is made & gyuen after the Wyl of god. And therefore all actes and dedes of man be called ryght /

Wise & iuste When they be done accordynge  
to the lawe of god and be cōformable to it.  
Also somtyme a lawe made by man: is cal  
led the lawe of god / As When a lawe ta  
keth his pryncypall groude vpon the lawe  
of god / and is made for the declaracyon or  
cōseruacyon of the fayth / and to put a way  
heresyces as dyuers lawes & annons / and  
also dyuers lawes made by the common  
people somtyme doo. The whiche therfo  
re are rather to be called the lawe of god /  
then the lawe of man. Yet neuerthelesse all  
the lawes & anon be not the lawes of god.  
For many of them be made only for the po  
lytycall rewe and conuersacyon of the peo  
ple / Wherupon Iohn Gerson i the treatyse  
of the spyrytuel lyfe of the soule the secoude  
Lesson / & the thyrde corollary sayth thus al  
the cānōs of Popes nor theyr decrees / be not  
the lawe of god. For many of them be ma  
de onely for the polytycall conuersacyon of  
the people. And yf any man Wyl saye be  
not all the good of the Church spyrytuell  
For they bylonge to the spyrytualytie and  
leed to the spyrytueltie / We answere that in  
the hole polytycall conuersacyon of the peo  
ple / there be some specyally deputed and de

### The thyrde

Spycate to the seruyce of god / the Which most  
specially as by an excellencie are called spy  
rytuell men as relygyous men are. And other  
though they walke in the Way of god. Yet  
nevertheles because theyr offyce is most spe  
cially to be occupied aboute suche thynges  
as pertainc to the comon Welth / and to the  
good ordie of the people / they be therfore cal  
led secular men or lay men / nevertheles the  
goodes of the fyrste may no more be called  
spyrytuel / the the goodes of the other for they  
be thynges mere temporall and keepyng the  
body as they doo in the other. And by lyke  
reason lawes made for the polypycall ordie  
of the Church be called many tyme spyry  
tuell / or the lawes of god. Nevertheles it is  
but vnproprie: and other be called Lay  
or the lawe of man. And in this poynt ma  
ny be oft tymes deceyued / and also deceyue  
other the Whiche Judge tho thyngs to be spy  
rytuell / the Whiche all men knowe be thyng  
ges materyall & carnall. These be the wor  
des of John Gerson in the place allegyd  
byfore. Furthermore besyde the law of rea  
son and the lawe of man it was necessarye  
to haue the lawe of god for foure reasons.  
The fyrste because man is ordeyned to the

ende of eternal felycitie the which exceedyth  
the proporcion & facultye of mānes power.  
Therefore it was necessarye that besyde the  
law of reaso & the law of man: he shuld be  
directyd to his ende by a law made of god.  
Seconde for asmoche as for the vncerteinte  
of mānes Juge<sup>t</sup> specially of thig<sup>s</sup> ptyculer  
& seldom fallynge. It hapenyth oft tymes  
to folowe dyuers Jugesmentes of dyuers  
men / and also dyuersyties of lawes / & ther  
fore to the entent that a man withoute any  
dought may knowe what he shuld do / and  
what he shulde not do / It was necessarye  
that he shuld be directyd in all his dedes by  
a lawe heuently gyuen by god / the whiche  
is so apparant that no man maye swaue  
fro it as is the lawe of god. Thyrde man  
may only make a lawe of such thynges as  
he may Juge vpon / and the Jugesment of  
man may not be of inwarde thynges / but  
only of outwarde thynges / & neuerthelesse  
it belongeth to perfeccyon that a man be  
well orderyd in both / that is to say as well  
inwarde as outwarde. Therefore it was ne  
cessary to haue the lawe of god / the whiche  
shuld ordie a man as well of inwarde thyn  
ges as of outwarde thynge. The fourth is by

The fourth  
cause as saynt Augustyn sayth in the fyrste  
boke of fre arbytrement / the lawe of man  
may not punyssh all offences: for yf all of  
fences shuld be punysshed / the comon welth  
shuld be hurte as it is of cōtractes / for it can  
not be auoydyd / but that as longe as con/  
tractes be sufferyd many offences shall fo/  
lowe therby / & yet they be sufferyd for the  
comon welthe. And therefore that no euyl  
shuld be unpunysshed / it was necessary to  
haue the lawe of god that shulde leue no e/  
uyl unpunysshed.

Of the lawe of man.  
The fourth Chapitre.



Octoure) The lawe of mā  
the whiche somtyme is cal  
led the lawe posytyue is de  
ruyed by reason as a thur  
ge whiche is necessaryly &  
probably folowynge of the  
lawe of reason / & of the lawe of god. And  
that is called probable y<sup>t</sup> apperith to many  
& specyally to wyse men to be trewe. And  
therefore in euery lawe posytyue well made  
is somewhat of the lawe of reason / and of

the lawe of god: and to discern the lawe of  
 god & the lawe of reason fro the lawe possy-  
 tyue is Very harde / & though it be harde yet  
 it is moche necessary in euery morall doctry-  
 ne / and in all lawes made for the comon  
 welth. And that the law of man be Juste &  
 ryght wyse / two thynges be necessary / that  
 is to saye / wysdom & auctorytie / wysdom  
 that he may Iudge after reason / What is to  
 be done for the comynaltie / and What is ex-  
 pedient for a peasyble conuersacyon / and  
 necessary sustentacyon of them / Auctorytie  
 that he haue auctorytie to make lawes. For  
 the lawe is named of / Ligare: that is to say  
 to bynde. But the sentence of a wyse man  
 doth not bynde the comynaltie yf he haue  
 no reule ouer theym. Also to euery good  
 lawe be requyred thysse proprietie: that is to  
 say that it be honest / right wyse / possyble in  
 it selfe / & after the custome of the countree /  
 conuenient for the place and tyme / necessa-  
 ry / profytable / and also manifest that it be  
 not capcious by any darke sentēce ne myxt  
 With any pryuate welth / but all made for  
 the comon welth. And after saynt Byrget  
 in the fourth booke in the. lxxij. chappytre /  
 euery good lawe is ordeyned to the helth of

### The fourth

the soule / & to the fulfyllynge of the lawes  
of god: and to enduce the people to flye euyl  
despyres & to do good workes. Also as the car  
dynall of Lamer wyteth what so euer is  
ryght wyse in the lawe of man is ryght wy  
se in the lawe of god / for euery manes law  
must be consonant to the lawe of god. And  
therfore the lawes of prynces / the commaun  
dementes of prelates / the statutes of comp  
nalties / ne yet the ordynaunce of the L hurch  
is not ryght wyse nor oblygatorie / but  
it be consonant to the lawe of god. And of  
suche a lawe of man that is consonant to  
the lawe of god / it appereth who hath right  
to landes & goodes / and who not: for what  
so euer a man hath by suche lawes of man  
he hath ryght wyslye. And what so euer is  
had agaynst suche lawes is vntyght wys  
lye had. For lawes of man not contrary to  
the lawe of god / nor to the lawe of reason  
muske be obseruyd in the lawe of the loule /  
and he that dyspyseth them dyspyseth god &  
resysteth god. And furthermore as Gracis  
an sayth bycause euyl men fere to offende  
for fere of payne. Therfore it was necessa  
rye that dyuers paynes shulde be ordeyned  
for dyuers offences as physycyons ordaye

He dyuers remedies for seuerall dysseases.  
 And suche paynes be ordeyned by the ma-  
 kers of lawes after the necessytye of the ty-  
 me / and after the dysposycion of the people.  
 And thoughe that lawe that ordeyneth su-  
 che paynes hath therby a confermytie to the  
 lawe of god: for that the law of god comaū-  
 deth that the people shall take a waye euyl  
 from amonge them selfe / yet they belonge  
 not so moche to the law of god / but y<sup>t</sup> other  
 paynes standyng the fy:ste principles my-  
 ghte be ordayned and appoynted / and ther-  
 fore that is the lawe that is called most pro-  
 prelye the lawe posytyue and the lawe of  
 man. And the Pphylosopher sayth i the thy-  
 de booke of his Etykes / that the entent of a  
 maker of a law is to make the people good  
 and to brynge them to Vertue. And though  
 I haue somwhat in a generalytye shewyd  
 the wherupon the law of Englade is groun-  
 dyd. For of necessytye it must be groundyd  
 of the sayd lawes / that is to say of the law  
 eternall / of the lawe of reason / and of the  
 lawe of god. Neuerthelesse I praye the she-  
 we me more speecially wherupon it is groun-  
 dyd as thou thynkest / as thou byfore haste  
 promysed to do. (Student) I wyll with

## The fyfth

good Wylle doo therein that lyeth in me / for  
thou hast shewyd me a ryght playne and a  
strayte Waye therto. Therfore thou shalte  
Vnderstande that the lawe of Englande is  
groundyd vpon fyve pryncypall groun-  
des. Fyyste it is groundyd on the lawe of rea-  
son. Seconde on the lawe of god. Thyrdsy  
on dyuers generall customes of the realme.  
Fourthly of dyuers pryncyples that be cal-  
led maxyimes. Fyftly on dyuers pattyculer  
customes. Syxtly on dyuers statuts made  
in Parlyamentes by the kynge & by the co-  
mon Councell of the realme / of which groun-  
des I shall speke by ordie as they be reher-  
cyd byfore / & fyyste of the lawe of reaso-  
n.

### Of the fyyste grounde of the lawe of Englande. The. V. Chapytte.



Student) The fyyste groun-  
de of the lawe of Englande  
is the lawe of reason / wher  
of thou hast treatyd byfore  
in the seconde chapytte / the  
whiche is kepte in this realme as it is in all  
other realmes & as of necessytye it muste ne-  
des be as thou hast said byfore. (Doctour)

But I Wolde knowe What is called the law of nature after the lawes of Englande.

**(Student)** It is not vsed amonge them that be lernyd in the lawes of Englande to reason what thyng is comaundyd or prohybyt by the lawe of nature and what not: but all the resonyng in that behalfe is vnder this maner: as when any thyng is growndyd vpon the lawe of nature: they say that reason wyll that suche a thyng be don/ and yf it be prohybyte by the lawe of nature.

They say it is agaynst reason or that reason wyll not suffre that it be don. **(Doctoure)**

Then I pray the shewe me what they that be lernyd in the lawes of the realme holde to be comaundyd or prohybyte by the lawe of nature vnder suche termes and after suche maner as is vsed amongest theym that be lernyd in the sayde lawes. **(Student)**

There be put by them that be lernyd in the lawes of Englande two degrees of the law of reason/ that is to say/ the lawe of reason pimarye/ and the lawe of reason secundarye/ by the lawe of reason pimarye be prohybyte in the lawes of Englande murther that is the deth of hym that is Innocēt/ perjurye/ dysceyte/ brekyng of the peace & ma/

### The fyfth

ny other lyke. And by the same law also it is lawfull for a man to defende hym selfe agaynst an Vniuste power so he kepe de we cyrcūstaunce. And also yf any promyse be made by manas to the body it is by the law of reason voyde in the lawes of Englande. The other is called the lawe of a secundarye reason / the whiche is deuyded in to two braunches / that is to say in to the lawe of a secundarye reason generall. And in to a lawe of a secundarye reason pertyculer. The lawe of a secundarye reason generall is groundyd and deriuyed of that generall lawe or generall custome of ppryete wherby goods mouable and vnmouable be brought in to a certayne ppryete / so that euery man may knowe his owne thynge. And by this braunche be prohybited in the lawes of Englande dysseacions / trespassse in landes & goodes rescues thefte vnlawfull withholdyng of another mānes goodes & suche other. And by the same lawe it is a grounde i the lawes of Englande that satysfaccyon must be made for a trespassse / & that restytucyon muste made of such goodes as one man hath that bysponge to another man / that dettes muste by payde: couenauntes fulfilled and suche

other. And bycause dysseasone / trespasse in  
landes and goodes: thefte & suche other had  
not ben knowen yf the lawe of proprietye  
had not ben ordeyned. Therefore all thyngs  
that be deryuyed by reason out of the sayde  
lawe of proprietye / be called the lawe of rea-  
son secundarye generall / for that lawe of  
proprietye is generally kept in all countrees.  
The lawe of reason secundarye pertyculer  
is that lawe that is deryuyed vpon dyuers  
customes general and pertyculer and of dy-  
uers maxymes & statutes ordeyned in this  
realme. And it is called the lawe of reason  
secundarye pertyculer bycause that reason  
in that case is deryuyed of suche a lawe that  
is oonly holden for lawe in this realme / &  
in none other realme.

**¶ Addycyon.**

**¶ Doctoure**) I pray the she we me some spe-  
cyall case of suche lawe of reason secunda-  
rye pertyculer for an example. **¶ Student**)  
There is a lawe in Englande / whiche is a  
lawe of custome y<sup>t</sup> yf a man take a dystres  
lawfully that he shall put it in a pounce o/  
uerte there to remayne tyll he be satysfied  
of that he dystreyned for. And then theru-  
pon may be asked this questyon that yf the

### The fyfth

Beestes dye in pounde for lacke of meate / at  
Whose peryll dye they / Whether dye they at  
the peryll of hym that dystreyned o: of hym  
that oweth the beestes. ¶ **Doctoure** Yf the  
laWe be as thou sayste and then a man for  
a iuste cause takyth a dystres and putteth it  
in pounde ouerte and no laWe compellyth  
hym that dystreyneth to gyue them meate /  
then it semyth of reason that yf the dystres  
dye in pounde for lacke of meate / that it dy  
eth at the peryll of hym that oweth the bee/  
stes & not of hym that dystreyned / for i hym  
that dystreyned there can be assygned noo  
defaute / but in the other may be assygned a  
defaute bycause the rente was Unpayde.

¶ **Student** thou haste gyuen a trewe Ju/  
gement and Who hath taughte the to do so /  
but reason dyspyed of the sayd general cu/  
stome. And the laWe is so full of suche secul/  
larre reasons dyspyed out of the generall  
customes and mappines of the realme that  
some men haue affermyd that all the laWe  
of the realme is the laWe of reason: but that  
can not be prouyd as me semyth as I haue  
partly shewyd byfore and more fully wyll  
shewe after. And it is not moche vsyd i the  
laWes of Englande to reason What laWe

is groundyd vpon the lawe of the fyrst reaso  
 primary/or of the lawe of reason secundarye  
 for they be most comonly openly knowen of  
 them self/ but for the knowlege of the lawe  
 of reason secundarye is greater dyfficultye/  
 & therfore therin depedyth moche the maner  
 and forme of argumentes in the lawes of  
 Englande. And it is to be noted that al the  
 deriuyenge of reason in the lawes of Eng  
 lande procedyth of the fyrste pryncples of  
 the lawe or of some thyng that is deriuy/  
 ed of them. And therfore no man may right  
 wysly Juge ne groundly reason in the law  
 es of Englande yf he be ygnoraunt in the  
 fyrste pryncples. Also all byrdes/ fowles/  
 Wyld beestes as beestes of forestes & War/  
 ren and suche other be exceptyd by the law  
 es of Englande out of the sayde generall  
 lawe and custome of proprietye. For by the  
 lawes of the realme no proprietye may be of  
 them in any person onles they be tame. Ne/  
 uerthelesse the egges of hawks/herons/or  
 suche other as buylde in the grounde of any  
 person/be adiunged by the sayd lawes to be  
 longe to hym that oweth the grounde.

**O**f the seconde grounde of the lawe  
 of Englande. The. vi. chapytre.

Dyaloge.

d.i.



**E**udent) The seconde  
grounde of the la<sup>w</sup>e of  
Englande is the la<sup>w</sup>e  
of god / and therfore for  
punysshement of them  
that offend agaynst the  
la<sup>w</sup> of god / it is enque  
ryd in many courtes in this realme / yf any  
holde any oppynyons secretely or in any o  
ther maner agaynst the trewe catholycall  
faythe. And also yf any generall custome  
were dyrectlye agaynst the la<sup>w</sup>e of god / or  
yf any statute were made dyrectly agaynst  
it / as yf it were ordayned that noo almesse  
shuld be gyuen for no necessitye that custo  
me and statute were voyde. Neuerthelesse  
the statute made in the .xxiii. yere of kynge  
Edward the thyrde / wherby it is ordayned  
that no man vnder payne of Impryson  
ment shall gyue any almesse to any vally  
aunt beggers that may well labour / that  
they may so be copellyd to labour for theyr  
lyuyng is a good statute / for it obseruyth  
the intent of the la<sup>w</sup>e of god. And also by  
auctorytie of this la<sup>w</sup>e there is a grounde  
in the la<sup>w</sup>es of Englande / that he that is  
accursed shall maynteyne no accyon in the

kynges courte except it be in Very fewe ca-  
 ses so that the same excoṁmunicacyon be cer-  
 tyfied byfore the kynges Justyces in suche  
 maner as the laṽe of the realme hath ap-  
 poynted. And by the auctorytie also of this  
 grounde / the laṽe of Englande amytteṽ  
 the spiryтуell Jurisdycyon of dysmes and  
 offerynges. And of all other thynges that  
 of right bylonge vnto it. And receyueth al-  
 so all laṽes of the Church de Welȝ made  
 and that excede not the power of them that  
 made them / In so moche that in many ca-  
 ses it behouyṽ the kyngs Justyces to Juge  
 after the laṽes of the churche. ¶ (Doctoure)  
 How we may that be that the kynges Justy-  
 ces shuld Juge in the kynges courtes after  
 the laṽe of the Church / for it seemyṽ that  
 the churche shuld rather gyue Jugement in  
 suchethyngs as it may make laṽes of: then  
 the kyngs Justyces. ¶ (Student) That may  
 be done in many cases / Wherof I shall for  
 an exāple put this case. If a Wyt of ryght  
 of Warde be broughte of the bodye &c. And  
 the tenaunt confessyng the tenour and the  
 nonage of the Infant / sayth y<sup>e</sup> the infante  
 was maryed i his aūcesters dayes &c. Wher-  
 upon .xii. men be sworne Whiche gyue this

### The sypte

Verdyt / that the Infante was maryed in  
the lyfe of his auncester. And that the Wo-  
man in the lyfe of his Auncester sued a de-  
uorce wherupon sentence was gyuen that  
they shulde be deuorcyd / And that the heyre  
appelyd whiche hangyth yet vndyscussyd  
prayenge the ayde of the Justyce to knowe  
whether the Infante i this case shalbe sayd  
maryed or not / In this case yf the la we of  
the E hurch be that the sayd sentence of de-  
uorce standeth in his strength & Vertue vntill  
it be adnullyd vpon the sayde appele.  
Then the Infante at the deyth of his aunce-  
ster was vnmaryed bycause the fyrste ma-  
ryage was adnullyd by that deuorce. And  
yf the la we of the E hurch be that the sen-  
tence of that deuorce standeth not in effecte  
tyll it be affermyd vpon the sayde appele /  
then is the Infante yet maryed / so that the  
Valur of his maryage can not belonge vnto  
the lorde. And therfore in this case Iuge-  
ment condycyonell shall be gyuen &c. And  
in lyke wyse the kynges Justyce in many  
other cases shall Iuge after the la we of the  
E hurch lyke as the spyrytuel Iuges must  
in many cases forme theyr Iugement after  
the kyngs la wes. (Doctoure) Howe may

that be that the spyrytuell Judges shuld Judge after the kynges lawes / I pray the she, We me some certayn case therof. ¶ Student Though it be somwhat a dygression fro our fyrst purpose / yet I Wyl not with saye thy desyre / but Wyl with good Wyl put the a case or two therof / that thou mayst the better perceyue what I meane / yf A. and B. haue goodes Joyntly / and A. by his laste Wyl byquetheth his porcyon therein to E. And maketh the sayde B. his executoure & dyeth / and E. askyth the executoryon of this Wyl in the spyrytuell courte / In this case the Judges there be bounde to Judge that Wyl to be voyde: bycause it is voyde by the lawes of the realme. And in lyke wyse yf a man be outlawed / and after by his Wyl byquetheth certayn goodes to John at style / and make his executours and dye / the kyng seasyth the goodes and after gyueth theym agayne to the executours / and after John at style suyth a sytacyon out of the spyrytuell courte agaynst the executours to haue executoryon of the Wyl / in this case the Judges of the spyrytuell courte must Judge the Wyl to be voyde as the law of the realme is that it is. And yet there is no suche lawe of for-

The seventh  
seytur of goodes by outlagarpe in the spy-  
rytuell lawe.

Of the thyrde grounde of the lawe  
of Englande. The. vii. chapytre.

**S**tudent) The thyrde groun-  
de of the lawe of Englande  
standeth vpon dyuerse gene-  
rall Customes of olde tyme  
vsed through all the realme:  
Which haue ben acceptyd and approuyd by  
our soueraygne lorde the kynge and his pro-  
genytours and all theyr subgettes. And by  
cause the sayd customes be neyther agaynst  
the lawe of god / nor the lawe of reason / &  
haue ben alwaye taken to be good and ne-  
cessarye for the comon welth of all the real-  
me. Therefore they haue optayned the stren-  
gthe of a lawe / in so moche that he that doth  
agaynst them doth agaynst Justyce. And  
these be tho customes that properly be called  
the comon lawe. And it shall alwaye be de-  
termyned by the Justyces whether there be  
any suche generall custome or not / and not  
by. vii. men. And of these general customes  
and of certayne pryncples that be called

mapymes Whiche also take effecte by the ol  
 de custome of the realme / as shall appere in  
 the chapytre nexte folowynge dependyth  
 moste parte of the law of this realme. And  
 therfore our soueraygne lord the Kyng at  
 his Coronacyon amonge other thynges ta  
 kyth a solempne othe / that he shal cause all  
 the customes of his realme faythfully to be  
 obseruyd. ¶ Doctour I pray the shewe me  
 some of these generall customes. ¶ Student  
 I wyll wylh good wyll and fyrste I shall  
 shewe the how the custome of the realme is  
 the verye grounde of dyuers courtes in the  
 realme / that is to say of the Chauncerye of  
 the kynges Bench of the comon place: and  
 the Eschequer / the whiche be courtes of recor  
 de bycause none may syt as Juge i the cour  
 tes but by the kynges letters patentes. And  
 these courtys haue dyuers auctorytes wherof  
 it is not to treat at this tyme. Other courtys  
 there be also only groundyd by the custome  
 of the realme: that be of moche lesse auctory  
 tie then the courtys byfore rehercyd / as in eue  
 ry shyre within the realme there is a courte  
 that is called the Couthe / and another that  
 is called the Shyriffes towe / and in euery  
 maner is a courte that is called a courte ba

### The seventh

ron. And to every fayre and market is incy-  
dent a courte that is called a courte of Wy-  
poddres. And though in some statutes is  
made mencyon somtyme of the sayd courtes.  
Yet neuertheles of the fyrste Instytucion of  
the sayd courtes: and that suche courtes shul  
be: there is no statute nor la we Wrytten  
in the lawes of Englande. And so all the  
grounde and begynnynge of the sayd cour-  
tes depende vpon the custome of the realme  
the Whiche custome is of so hygh auctoritic  
that the sayde courtes ne theyr auctorities  
may not be alteryd / ne theyr names chaun-  
ged Without Parlyament.

Also by the olde custome of the realme /  
no man shall be taken in prysonyd dyssea-  
syd nor other wyse destroyed / but he be put  
to answer by the la we of the lande: & this  
custome is cōfermyd by the statute of Mag-  
na carta the. xxvi. chapytre.

Also by the olde custome of the realme al  
men great and small shall do and receyue  
Justyce in the kynges courtes / and this cu-  
stome is consermyd by the statute of Marl-  
brygge the fyrste chapytre.

Also by the olde custome of the realme /  
the eldest sone is only heyre to his auncestes

and yf there be no sones but daughters: then  
 al the daughters shal be heyre: and so it is of  
 susters and other kynnes women. And yf  
 there be nother sone / daughter / brother / nor  
 suster / then shal the enherytaunce dyscende  
 to the nexpte kynnesman or kynnes woman  
 of the hole blode to hym that had the enhyt  
 taunce of how many degrees so euer they be  
 from hym. And yf there be no heyre general  
 nor specyall / then the lande shal eschete to  
 the Lorde of Whom the lande is holden.

¶ Also by the olde custome of the realme /  
 landes shal neuer ascende / nor dyscende  
 from the sone to the father or mother / nor to  
 any other auncestre in the ryght lyne / but it  
 shal rather eschete to the lorde of the fee.

¶ Also yf an alyen haue a sone that is an  
 alyen and after is made Denyzyn / and  
 hath another sone / and after purchasyth la  
 des and dyeth / the yonger sone shal enhery  
 te as heyre / and not the eldest.

¶ Also yf there be thre bretherne & the myd  
 lest brother purchase lades & dyeth without  
 heyre of his body the eldest brother shal inhe  
 ryt as heyre to hym: & not the yonger brother.

¶ Also yf lande in fe symple dyscende to a  
 man by the pte of his father & he dyeth with

### The seventh

out heyre of his body / then that inherytaunce shall dyscende to the next heyre of the parte of his father. And yf there be no suche heyre of the parte of his father / then yf the father purchasyd the landes it shall go to the next heyre of the fathers mother and not to the next heyres of the soñes mother / but it shall rather eschete to the lo:de of the fee: but yf a man purchase lādes to hym and to his heyres & dye Without heyre of his body as is sayd byfore / then that lande shall dyscende to the next heyre of the parte of his father yf there be any / and yf not then to the next heyre of the parte of his mother.

¶ Also yf the sone purchaseth landes in fee and dye Without heyre of his body / the lande shall dyscende to his Uncle and shal not ascende to his father / but yf the father haue a sone though it be many yeres after the deth of the elder brother / yet that sone shall put out his Uncle and shall enioy the lande as heyre to his elder brother for ever.

¶ Also by the custom of the realme the chylde that is borne byfore spouselles is bastarde and shall not inheryte.

¶ Also the custome of the realme is that no maner of goodes nor catelles reall nor pers

sonell shall neuer go to the heyre / But to the executoures / or to the ordynarye or admystratoures.

**A**lso the husbonde shall haue all the chattellys parsonellys that his Wyfe had at the tyme of the spousellys or after: and also chattellys reall yf he ouer lyue his Wyfe / but yf he sell or gyue away the chattellys reallys & dye by y<sup>r</sup> sale or gyfte the interest of the Wyfe is determyned / & els they shal remayne to the Wyfe yf she ouer lyue her husbonde.

**A**lso the husbonde shall haue all the inherytaunce of his Wyfe wherof he was seased in dede in the tryght of his Wyfe durynge the spousellys in fee or in fee tayle generall / for tyme of his lyfe / yf he haue any chyld by her to holde as tenaunt by the curtesye of Englande / & the Wyfe shall haue the thyrde parte of the inherytaunce of her husbonde wherof he was seasyd in dede or in law after the spousellys &c. but in that case the Wyfe at the deth of her husbode must be of the age of .ix. yere or aboue / or els she shall haue no dower. **(Doctoure.)** What yf the husbonde at his deth be within the age of .ix. yere. **(Student)** I suppose she shal yet haue her dower.

**A**lso the olde Lawe & custome of the res  
Dyaloge. c.ii.

### The seventh

alme is that after the deth of euery ternaute that holdeth his landes by knyghts seruyce the lord shall haue the Warde and marpage of the heyre tyll the heyre come to the age of .xxi. yere. And yf the heyre in that case be of full age at the deth of his auncestre / then he shall paye to his lord his rel yef whiche at the comon lawe was not certayne / but by the statute of Magna carta / it is put in certayn: y<sup>t</sup> is to say for euery holt knyghtes fee to paye a .L. shyllinges. And for a holt baronye to pay a hondred marke for releys. And for a holt erledom to pay a .L. pounde and so after the rate. And yf the heyre of suche a ternaute be a woman / and she at the dethe of her auncestre be within the age of .xiii. yeres / then by the comon lawe she shulde haue ben in Warde oonly tyll .xiii. yere / but by the statute of Westm the fyrste in suche case she shal be in Warde tyll .xvi. yere. And yf at the deth of her auncestre she be of the age of .xiii. yere or aboue / she shal be out of Warde / though the lades be holden of the kynge. And then she shall pay releys as an heyre male shall.

Also of landes holden in socage yf the auncestre dye / his heyre beyng within the

age of .xliii. yeres / the next frende of the heyre to Whom the inherytaunce may not dyscende shal haue the Warde of his body & landes tyll he shall come to the age of .xliii. yere / & then he may entre. And When the heyre cometh to the age of .xvi. yere / then the garsdeyn shall yelde hym accompte for the profits fettes therof by hym receyued.

¶ Also suche an heyre in socage for his relyef shall double his rent to the lord the yere folowynge the deth of his auncestre / as yf his aūcestre helde by .xii. d. rent / the heyre in the yere folowynge shall pay that .xii. d. for his rent / & other .xii. d. for his relyef. And that relyef he must pay though he be within age at the deth of his auncestre.

¶ Also there is an olde lawe and custome in this realme that a freholde by Way of seffement gyfte or lease passyth not without lyuerey of season be made vpon the lāde accordynge though a dede of seffement be therof made & delyueryd: but by Way of surrendre partycion and eschaunge a frehold may passe without lyuerey.

¶ Also yf a mā make a Wyll of land wher of he is seasyd in his demesne as of fee / that Wyll is voyde / but yf it had stande in seffes

### The seventh

handes it had ben good. And also in lōdon  
suche a Wyll is good by the custome of the  
cytie yf it be introdyd.

¶ Also a lease for terme of yer<sup>s</sup> is but a cha/  
tell in the law / & therfore it may passe with  
out any lyuerey of season / but other wyse it  
is of a state for terme of lyfe for that is a fre  
hold in the law / & therfore lyuerey must be  
made therof or els the frehold passyth not.

¶ Also by the old custome of the Realme a  
man maye dystreyn for a rent scruyce of cō  
mon ryght. And also for a rent reseruyd v  
pon a gyfte in tayle / a lease terme of lyfe / of  
yeres and at Wyll / and in suche case the lor  
de may dystreyn the tenauntes beestes as  
soon as they come vpon the grounde / but the  
beestes of straūgers that com in but by ma  
ner of an escape / he may not dystreyn tyll  
they haue ben leuant & couchant vpon the  
grounde: but for dette vpon an oblygacion  
nor vpon a contracte / nor for accompte ne  
yet for atterag<sup>s</sup> of accompte / nor for no ma  
ner of trespassse / reperaciōs / nor suche other  
no man may dystreyn.

¶ Also by the olde law & custome of the re  
aline al yssues that shalbe ioynd be twaye  
te partie and partie in any courtte of recorde

Within the Realme excepte a fewe wherof  
it nedith not to treat at this tyme / muste be  
tryed by. vii. fre & lawfull men of the Dysne  
that be not of affynytie to none of the par/  
tyes. And in other court; that be not of recor/  
de / as in the countye / court baron / hundred  
& suche other lyke / they shalbe tryed by the  
othe of the parties & not other wyse oonles  
the parties assent that it shalbe tryed by the  
homage. And it is to be notyd that lordes/  
barons / and all pyers of the realme be exce/  
pted out of suche tryalles yf they Wyll / but  
yf they Wyll Wyllfully be sworne therein/  
some say it is no erroure. And they may yf  
they Wyll haue a Wytte out of the E haun/  
cerpe dyrectyd to the Shyr: yf comaundyng  
hym that he shall not impaneell them vpon  
no enquest. And of this that is sayd byfore  
it appereth that the customes aforesayd nor  
other lyke vnto them / wherof be very ma/  
ny in the lawes of Englade can not be pro/  
uyd to haue the strength of a lawe only by  
reason: for how may it be prouyd by reason  
that the eldest sone shall onelye enheryte his  
father & the yonger to haue no parte / or that  
the husbonde shall haue the hole lande for  
terme of his lyfe as ternaunt by the curtesye

### The seventh

in suche maner as byfore appertyth. And that the Wyfe shal haue only the thyrde parte in the name of her dowder / & that the husbande shal haue all the goodes of his Wyfe as his owne. And that yf he dye lyuynge the Wyfe / that his executours shal haue the goodes / and not the Wyfe. All these and suche ather can not be prouyd oonly by reason that it shuld be so and no other Wyse although they be reasonable / & that With the custome therein vsed suffyseth in the lawe. And a statute made agaynst suche general customes ought to be obseruid bycause they be not merely the lawe of reason.

¶ Also the lawe of ppertye is not the lawe of reason / but a lawe of custome howe be it that it is kept / and is also ryght necessarye to be kept in all realmes & amonge all people. And so it may be nombred amonge the generall customes of the realme. And it is to vnderstande that there is no statute that treatyth of the begynnyng of the sayd customes: ne why they shuld be holden for lawe. And therefore after theym that be lernyd in the lawes of the realme: the olde custome of the realme is the only and suffycient auctorytie to them in that behalfe. And I praye

the ſhe we me what doctours holde therein /  
 that is to ſaye whether a cuſtome oonly be  
 ſuffycient auctoritie of any lawe. ¶ Doct  
 toure) doctours holde that a lawe groundyd  
 vpon a cuſtome is the moſte ſureſt lawe /  
 but this muſt be alwayes vnderſtode ther /  
 With that ſuche a cuſtome is nother contra  
 rie to the lawe of reaſon / nor to the lawe of  
 god. And nowe I praye the ſhe we me ſom  
 what of the maxymes of the lawe of Eng  
 lande wherof thou haſte made mencyon by  
 fore in the.iiii.chapytre. ¶ Student) I wyl  
 With good wyll.

¶ Of the.iiii.grounde of the lawe of  
 Englande. The. vii.chapytre.



Student) the.iiii.grounde  
 of the lawe of Englande  
 ſtandyth in dyrecte prin  
 ciples that be called in  
 the lawe maxymes / the  
 which haue ben alway  
 es taken for lawe in this  
 realme / ſo that it is not lawfull for none  
 that is lernyd to denye them / for every one  
 of thoſe maxymes is ſuffycient auctoritie

The eyght  
to hym selfe. And whiche is a mappme / &  
whiche not shall alway be determyned by  
the Judges / and not by. pui. men. And it nei  
sith not to assygne any reason why they  
were fyrste receyued for mappmes for it suf  
fyseth that they be not agaynst the lawe of  
reason nor the lawe of god / & that they haue  
alway be taken for lawe. And suche mapp  
mes be not onlye holden for lawe / but also  
other cases lyke vnto them / and all thyngs  
that necessarily foloweth vpon the same /  
ar to be reduced to lyke lawe. And therfore  
moste comenly there be assigned some rea  
sons or cosyderacyon why suche mappmes  
be resonable to the intent that other cases ly  
ke may the more conueniently be applyed  
to them. And they be of the same strength &  
effect in the lawe as statuti be. And though  
the generall custome of the Realme be the  
strength and Waraunte of the sayd mapp  
mes: as they be of the gñral customes of the  
realme / yet because the sayd generall custo  
mes be in maner knowen through the real  
me as well to them that be vnlearnyd as lee  
nyd / and may lyghtly be had and knowen  
and that with lytell stodye. And the sayde  
mappmes be onlye knowen in the kynges

courtes or amonge them that take great stude in the lawe of the realme / and amonge fewe other persones. Therefore they be set in this wytyngge for severall groundes and he that lysteth may so accompte them / or yf he wylle he may take them for one grounde after his pleasure / of which maxymes I shal hereafter shewe the parte.

**T**hyrste there is a maxyme that Escuage Uncertayne makyth knyghtes seruyce.

**A**lso there is another maxyme that Escuage certayne makyth socage.

**A**lso that he that holdeth by castell garde / holdeth by knyghtes seruyce / but he holdeth not by escuage / And that he that holdeth by .xx. shyllynges to the garde of a castell holdeth by socage.

**A**lso there is a maxyme that a dyscent taketh a waye an entre.

**A**lso that no prescrypcyon in landes maketh a ryght.

**A**lso that a prescrypcyon of rent & of profytes aprenidre out of lāde maketh a ryght.

**A**lso that the lymytacyon of a prescrypcyon generally taken is from the tyme that no mānes mynde remueth to the contrarpe.

**A**lso that assygnies may be made vpon

## The eyght

Landes gyuen in fee for terme of lyfe / or for  
terme of yeres though no mencyon be made  
of assygnies / & the same landes is of a rent  
that is grauntyd / but other wyse it is of a  
Warantye and of a couenaunte.

¶ Also that a condycyon to auoyde a free  
holde can not be pleadyd without dede / but  
to auoyde a gyft of a chattell it may be plea  
dyd without dede.

¶ Also that a release or a cōfirmacyon ma  
de by hym that at the tyme of the release or  
confirmacyon made had no ryght is voyd  
de in the lawe / though a right come to hym  
after except it be with Waraūtye / and then  
it shall barre hym of all ryght that he shall  
haue after the Waraūtye made.

¶ Also that a ryght or tytyle of accyon that  
only dependyth in accyon can not be gyuen  
nor graūted to none other but only to the te  
nant of the grounde / or to hym that hath the  
reuercyon or remayndre of the same lande.

¶ Also that in an accyon of dette vpon a  
contracte the deff<sup>r</sup> maye wage his lawe /  
but other wyse it is vpon a lease of landes  
for terme of yeres or at wyll.

¶ Also that yf an exigent i case of felonye  
be a Wardyd agaynst a man: he hath thereby

forth With forfetyd his goodes to the kyng.

¶ Also yf the sone be atteyntyd in the lyfe of the father / and after he purchaseth his chattoure of Pardoun of the kyng / and after the father dyeth / In this case the lande shall eschete to the lord of the fee in so moche that though he have a yonger brother / yet the lande shall not dyscende to hym / for by the atteyndie of the elder brother the blod is corrupte and the father in the lawe dyeth without heyre.

¶ Also yf an abbot or a pryour alene the landes of his house and dyeth / in that case though his successour have right to the lande yet he may not entre: but he must take his accon that is appoynted hym by the lawe.

¶ Also there is a maxyme in the lawe that yf a Vyllayne purchase landes and the lord entre / he shall enioye the lande as his owne / but yf the Vyllayne alene byfore the lord entre / that alenacyon is good / And the same lawe is of goodes.

¶ Also yf a man stele goodes to the value of .xii. d. or aboue it is felonye / and he shall dye for it / And yf it be vnder the value of .xii. d. then it is but petyt larcynye & he shall not dye for it / but shalbe other wyse punysht.

## The eighth

shew after the dyscrecyon of the Judges ex-  
cept it be taken fro the person / for yf a man  
take any thyng so lye lytell so euer it be /  
from a mānes persone felonously / it is call-  
led roberye and he shall dye for it.

¶ Also he that is areynyd vpon an Indys-  
temment of felonye shall be admyttyd in fas-  
uoure of lyfe to chalenge. xxxv. Jurrours  
peremtorily / but yf he chalenge any aboue  
that nombre / the la we taketh hym as won  
that hath refused the la we bycause he hath  
refused thre hole enquestes / and therfore he  
shall dye: but with cause he may chalenge as  
many as he hath cause of chalenge to. And  
further it is to be vnderstande that suche per-  
emtorie chalenge shal not be admytted in ap-  
peale bycause it is at the suite of the partie.

¶ Also the lande of every mā is in the la we  
enclosed from other though it lye i the open  
felde. And therfore yf a man do a trespassse  
therin the Wyt shal be quare clausū fregit.

¶ Also that rentes / cōmons of pasture of  
turbary reuercyons remaindres / nor suche  
other thyngs whiche lye not in manuell oc-  
cupacyon maye not be gyven nor graunted  
to none other without Wytynge.

¶ Also that he that recoueryth dette or dā

images in the kynges court by suche an accyon Wherin a *Capias* laye in the processe may Within a yere after the recouerye haue a *Capias ad satisfaciendum* to take the bodye of the defendaunt and to comyt hym to pryson tyll he haue payde the dette and damages / but yf there laye no *Capias* in the fyrste accyon / then the playntyfe shall haue no *Capias ad satisfaciendum* / but must take a *fieri facias* or an *elegit* Within the yere: or a *scire facias* after the yere or Within the yere yf he Wyll.

¶ Also yf a release or confirmacyon be made to hym: that at the tyme of the release made had no thynge in the lande. .cc. the release or confirmacyon is voyde except certayne cases as to a Vouchye & certayne other Whiche nede not here to be remembred.

¶ Also there is a maxyme in the lawe of Englande that the kyng may dyssease no man / ne that no man may dyssease the kyng / ne pull any reuercyon or remayndre out of hym.

¶ Also the kynges excellencye is so hyghe in the lawe that no freholde may be gyuen to the kyng ne be deroyed from hym / but by mater of recorde.

## The cyghe

¶ Also there was somtyme a maxime a la we in englande that no man shoulde haue a Writ of ryght: but by speccyall suppe to the kynge. And for a fyne to be made in the Chauncery for it / but tho maxymes be chaunged by the statute of magna carta the. p. vi. chapp. i. Where it is sayd thus. Nulli negabim<sup>9</sup> nulli vendem<sup>9</sup> rectū vel iusticiam. And by the sayd wordes nulli negabim<sup>9</sup> / a man shall haue a Writ of ryght of course in the Chauncery without suppe to the kynge for it. And by the wordes nulli vendemus he shall haue it without fyne. And so many tymes the olde maxymes of the la we be chaunged by statutes.

¶ Also thoughe it be resonable that for the manyfolde dyuersyties of accyons that be in the lawes of Englande / that there shuld be dyuersyties of processe as in the reale accyons after one maner / and in personall accyons after another maner: yet it can not be prouyd merely by reason that the same processe ought to be had and none other / for by statute it might be alteryd. And so the grounde of the sayd processe is to be referryd only to the maxymes and customes of the realmes. And I haue shewyd the these max

ymes byfore rehercyd / not to the intent to  
 shewe the specially what is the cause of the  
 lawe in them / for that wolde aske a great  
 respyte / but I haue shewyd them onely to  
 the intent that thou mayst perceyue that the  
 sayde mapymes and other lyke may conue  
 nyently be sette for one of the groundes of  
 the lawes of Englande / moreover there be  
 dyuers cases / wherof I am in doute whe  
 ther they be onely mapymes of the lawe or  
 that they be groundyd vpon the lawe of  
 reason / wherin I praye the let me here thys  
 ne opynyon. ¶ Doctoure) I praye the shewe  
 those cases that thou meanest: & I shall ma  
 ke the answer therein as I shall see cause.

¶ Hereafter foloweth dyuers cases wherin  
 the Student doutyth whether they be  
 onely mapymes of the lawe / or that  
 they be groundyd vpon the lawe  
 of reason. The. ix. chapytre.



Student) the lawe of engla  
 de is that yf a man comaun  
 de another to do a trespassse  
 & he doth it / that the comaun  
 dour is a trespassser. And I  
 am in doute whether that be only by a map

## The ninth

yme of the la We / or that it be by the la We of reason.

**A**lso I am in doute vpon what la We it is groundyd that the Accessory shall not be put to ans were byfore the pryncypall &c.

**A**lso the la We is that yf an Abbot bye a thynge that comyth to the vse of the howse and dyeth that his successours shall be charged / and I am somewhat in doute vpon what grounde that la We dependyth.

**A**lso that he that hath possession of lāde though it be by disseaso hath ryght agaynst all men / but agaynst hym that hath ryght.

**A**lso that yf an accyon reall be suyd agaynst any man that hath nothynge in the thynge demaundyd the Wryt shal abate / as at the cōmon la We.

**A**lso that the alienacyon of the tenaunt hangynge the Wryt nor his entre in to relygyon / or yf he be made a knyghte / or yf she be a woman and take an husbode hangynge the Wryt / that the Wryt shall not abate.

**A**lso yf lande and rente that is goynge out of the same lande come in to one mannes hande of lyke estate and lyke suertye of tytle / the rent is extyncte.

**A**lso yf lande dyscende to hym that hath

tyght to the same lande byfore / he shall be remytted to his better tytyle yf he Wyll.

**A**lso yf two tytles be concurrant toggyther / the eldest tytyle shall be preferryd.

**A**lso that euery man is bounde to make recompence for suche hurte as his beest shal do in the corne or grasse of his neyghboure though he know not that they were there.

**A**lso yf the demaundaunt or playntyffe hangynge his Wytte Wyll entre in to the thyng demaundyng his Wyt shall abate.

And it is many tymes very harde and of great dyfficultie to knowe what cases of the lawe of Englande be groundyd vpon the lawe of reason / and what vpon custome of the realme / and though it be harde to dyscuss it: yet it is very necessary to be known for the knowleg of the partyte reason of the lawe / and yf any man thynke that these cases byfore rehercyd be groundyd vpon the lawe of reason / then he may referre them to the fyrste grounde of the lawe of Englande whiche is the lawe of reason / wherof is made mencyon in the. v. chapytre. And yf any man thynke that they be groundyd vpon the lawe of custome / then he maye referre them to the maxymes of the lawe / whiche

### The nynt

be assigned for the thyrde ground of the  
lawe of Englande / wherof mencyon is ma  
de in the. viii. chapytre as byfore apperyth.

**(Doctoure)** but I praye the shewe me by  
what auctorytie is it prouyd in the lawes  
of Englande that the cases that thou haste  
put byfore in the. vii. chapytre / and suche  
other whiche thou callest maxyimes oughte  
not to be denyed / but ought to be taken as  
maxyimes / for sythe they can not be prouyd  
by reason as thou agreeest thy selfe they can  
not / they maye as lyghtly be denyed as as  
fermyd onles there be some suffycient au  
ctorytie to approue them. **(Student)** ma  
ny of the customes & maxyimes of the law  
es of Englande be knowen by the vse and  
custome of the realme so apparantly that it  
nedeth not to haue any lawe wytten ther  
of / for what nedyth it to haue any lawe  
wytten that the eldest sone shall inheryte  
his father / or that all the daughters shall in  
heryte togyther as one heyre / yf there be no  
sone / or that the husbonde shall haue the  
goodes and chatellys of his wyfe that she  
hath at the tyme of the sponsellys or after /  
or that a bastarde shall not inheryte as he  
re / or that executours shall haue the disposy

eyon of all the goodes of they: testatoure:  
 and yf there be no executours that the ordy-  
 narie shall haue it / and that the heyre shall  
 not medle With the goodes of his auncestre:  
 but any partyculer custom helpe hym. The  
 other mapymes and customes of the la We  
 that be not so openly knowen amonge the  
 people may be knowen partly by the la We  
 of reason: a partly by the bookes of the la W<sup>s</sup>  
 of Englande called yeres of termes / a part  
 ly by dyuers reco:ds remaynyng i the kyns  
 ges courtes a in his tresor. And specyally  
 by a boke that is called the regestre / a also  
 by dyuers statuts wherin many of the sayd  
 customes and mapymes be ofte respyted / as  
 to a dplyget sercher Wyll euidently appere.

**Of the. V. grounde of the la We of  
 Englande. The. p. chapytre.**

**S**tudent) The. V. groude of  
 the la We of Englande stan-  
 dyth in dyuers partyculer cu-  
 stomes Vsed in dyuers coun-  
 tres / towne / cyties / a lord-  
 shippes in this realme / the Whiche ptyculer  
 customes bycause they be not agaynst the  
 Dyaloge. g.iii.

## The tenth

la we of reason / nor the la we of god / though they be agaynst the sayde generall customes or maxymis of the la we: yet neuertheles they stand in effecte and be taken for la we / but yf it ryse in questyon in the kynges courtes whether there be any such partyculer custome or not / it shalbe tryed by .xii. men / & not by the Juges / except the same partyculer custoe be of recorde in the same courte. Of whiche partyculer customes / I haue hereafter noted some for an ensample.

**T**hyrste there is a custome in Kent that is called gauckkynde / that all the bretherne shall enheryt togyther as susters at the comon la we.

**A**lso there is another partyculer custome that is called burghenglysshe wher the yonger sone shall enheryte byfore the eldest: and that custome is in notyngthame.

**A**lso there is a custom in the cytie of London that fre men there: maye by theyr testamente inroulyd by queth theyr landes that they be seasyd of to whome they wyll / excepte to mortmayne. And yf they be cytyzens and fre men / then they maye also by queth landes to mortmayne.

**A**lso in gauckkynde though the father be

hangyd the sone shall enheryt / for theyr custome is the father to the bough / the sone to the plough.

¶ Also in some countres the Wyfe shal haue the halfe of the husbondes landes in the name of her dowrye as longe as she lyueth sole.

¶ Also in some countre the husbonde shal haue the halfe of the enherytaunce of his Wyfe / though he haue no yssue by her.

¶ Also in some countre an infaute when he is of the age of .xv. yere may make a seffement / & the seffement good. And in some countre when he can mete any elie of clothe.

¶ Of the sypte grounde of the lawe of Englande. The. vi. chapytre.



¶ Under the. vi. grounde of the lawe of Englande standeth in dyuers statutes made by our soveraygne lord the kynge & his progenytours / and by the lordes spiry

tuell and temporall / and the comons in dyuers Parlyaments in suche cases where the lawe of reason / the lawe of god / customs /

## The cleynth

maxymes / ne other groundes of the lawe  
senyd not to be suffycyēt to punyssh the euyl  
men / and to reward good men. And I re-  
membre not that I haue seen any other groun-  
des of the lawe of Englynde / but only these  
that I haue byfore remembred. Furthermo-  
re it appereth of that I haue sayde byfore  
that oft tymes two or thre groundes of the  
lawe of Englande muste be ioyned togy-  
ther / or that the playntyfe can open and de-  
clare his ryght / as it may appere by this ex-  
ample. If a man entre in to another mānes  
lande by force: and after maketh a seffemēt  
for mayntenaūce to defraude the playntyfe  
from his accyon. In this case it appereth  
that the sayd vnlawfull entre is prohybte  
by the lawe of reason / but that the playn-  
tyfe shall recouer treble damages that is by  
reason of the statute made in the. viii. yere  
of kyng Henry the. vi. the. ix. chapitre. And  
that the damages shalbe seasyd by. vii. men  
that is by the custome of the realme. And so  
in this case thre groudes of the lawe of En-  
glande mayntene the playntyffes accyon.  
And so it is in dyuers other cases that nede  
not to be remembred no we. and thus I make  
apende for this tyme / to speke any fether

of the groundes of the lawe of Englande.

**[Doctoure]** I thanke the for the great payne that thou haste taken therein / neuertheles for as moche as it appereth by y<sup>t</sup> thou haste sayd byfore that the lernyd men of the lawe of Englande pretende / to verysye that the lawe of Englande wyll no thyng do / ne attempte agaynst the lawe of reason / nor the lawe of god / I pray the answer me to some questyons groundyd vpon the lawe of Englande / howe as the thynketh the lawe may stande with reason or cōscience in them. **[Student]** put the case & I shall make answer therein as well as I can.

**[The fyrste questyon of the Doctoure of the lawe of Englande and conscience. The. vii. chapytre.]**



**[Doctoure]** I have hard say that yf a man that is bounde in an oblygacyon paye the money: but he taketh no acquytaunce or yf he take one & it happenyth hym to lese it / that in that case he shal be compellid by the lawes of Englande to paye the

**Dyaloge.**

**h.i.**

## The t<sup>h</sup> Deluyth

money agayne / and howe maye it be sayde  
then / that that lawe standeth with reason  
or consyence / for as it is groundyd vpon  
the law of reason that dettes ought of right  
to be payde / so it is groundyd vpon the law  
of reason (as me semyth) that when they be  
payde that he that payeth them shuld be dys  
chargyd. ¶ Student) fyrste thou must vn  
derstande that it is not the lawe of Engla  
de / that yf a man that is bounde in an obly  
gacyon pay the money without acquytaun  
ce / or yf he take acquytaunce and lese it: that  
therfore the lawe determineth that he ought  
of ryght to paye the money este sones / for  
that lawe were bothe agaynst reason & co  
nsyence / but trougth it is that there is a ge  
nerall maxyme in the lawe of Englande /  
that in an accyon of dette sued vpon an ob  
lygacyon / the defendaunte shall not plede  
that he oweth not the money / ne can in no  
wyse dyscharge hym selfe in that accyon /  
but he haue acquytaunce or some other wy  
tyngc suffycient in the lawe or some other  
thyngc lyke / wytnessyng that he hathe pay  
de the money / and that is ordayned by the  
lawe to auoyde a great inconuenience that  
els myght happen to come to many people

that is to say that euery man by a nude pa/  
toll and by a bare auerment shulde auoyde  
an oblygacyon / wherfore to auoyde that in  
conuenyence the lawe hathe ordayned that  
as the defendaunt is charged by a sufficient  
Wrytynge / that so he must be discharged by  
suffycient Wrytynge / or by some other thyn  
ge of as hygh auctoritie as the oblygacyon  
is. And though it may folowe therupō that  
in some partyculer case a man by occasyon  
of that generall mapyme maye be compel  
lyd to pay the money agayne that he payde  
byfore / yet neuerthelesse no defaute can be  
therfore assygned in the lawe . For lyke as  
makers of lawes take hede to suche thynge  
as may oft fall / and do moste hurte amon  
ge the people rather then to partyculer cases  
So in lyke wyse the generall groundes of  
the lawe of Englande / hede more what is  
good for many / then what is good for one  
synguler person only. And bycause it shuld  
be a hurte to many yf an oblygacyon shuld  
be so lyghtly auoyded by worde. Therefore  
the lawe specyally preuentyth y<sup>e</sup> hurte vn  
der suche maner as byfore appereth . And  
yet intendyth not / nor comaūdyth not that  
the money of ryght ought to be payde agay

## The.vii.

ne / But settyth a generall rule / Whiche is  
 good and necessary to all the people / & that  
 euery man maye Well kepe / Without it be  
 th:ough his owne defaute / and yf suche de/  
 faute happen in any persone / Wherby he is  
 Without remedye at the cōmon la We: yet he  
 maye be holpen by a sub pena / & so he maye  
 in many other cases Where conscience set/  
 tyth for hym / that Were to longe to reherce  
 no We. ¶ Docto<sup>r</sup>) but I pray the shewe me  
 Vnder What maner a mā may be holpe by  
 conscience. And Whether he shal be holpen  
 in the same courte or i an other. ¶ Student  
 bycause it can not be Wel declaryd Where a  
 man shal be holpen by conscience and Whe  
 re not / but it be fyrste knowen What conscy  
 ence is / therfore bycause it pertyneth to the  
 moste proprelye / to treat of the nature and  
 qualytie of conscience / therfore I praye the  
 that thou Wylte make me some bryef decla/  
 racyon of the nature and qualytie of conscy  
 ence. And then I shall answere to thy que/  
 styon as Well as I can. ¶ Docto<sup>r</sup>) I Wyl  
 With good Wylle do as thou sayste / & to the  
 intent that thou mayst the better Vndersta  
 nde that I shall saye of conscience / I shall  
 fyrste shewe the What sinderesis is / & then

What reason is / and then What consyence  
is. And howe these thre dyffer amōg them  
selfe I shall somwhat touche.

What sinderesis is. The. viii. Chapytte.

**D**octoure) Sinderesis is a naturall  
poder of the soule sette in the hygh-  
est parte therof / mouynge and ster-  
rynge it to good / & abhorrynge euill. And  
therfore sinderesis neuer synneth nor erryth.  
And this sinderesis our Lorde put in man  
to the intent that the ordre of thynges shuld  
be obseruyd. For after saynt Deonyse the  
Wysdom of god Joyneth the begynnynge  
of the seconde thynges to the laste of the fyr-  
ste thynges / for Aungell is of a nature to  
Vnderstande Without serchynge of reasons  
and to that nature man is Joyned by sinde-  
resis / the Whiche sinderesis maye not holie  
be extyncted neyther in man ne yet in dam-  
pned soules. But neuertheses as to the Use  
and exersyse therof / it maye be lette for a ty-  
me eyther thorughe the darkenesse of ygnor-  
raunce / or for Vndyscrete defectacyon / or  
for the hardnes of obstynacye / fyrste by the  
darkenes of ygnoraunce sinderesis may be

### The. xiii.

lette that it shall not murmur agaynst euyl / bycause he byleuyth euyl to be good / as it is in heretykes / the Whiche When they dye for the Wyckydnes of theyr erroure byleue that they dye for the Verry trouth of the faythe . And by Vndyscrete delectacyon / sinderesis is somtyme so ouer layde that remorse or grudge of consyence / for the tyme can haue no place . For the hardnes of obstynacye sinderesis is also let / that it maye not styre to goodnes as it is in dampned soules that be so obstynate in euyl / that they may neuer be enclyned to good . And though the sinderesis may be sayd to that poynt extyncte in dampned soules : yet it may not be sayd that it is fully extyncte to all intentes For they al Waye murmur agaynst the euyl of the payne that they suffre for synne . And so it may not be sayde that it is Vniuersally / and to all intentes / and to all tymes extyncte . And this sinderesis is the begynnynge of all thynges that may be lernyd by speculacyon or studye . And mynystreth the generall groundes & pryncples therof . And also of all thynges that are to be done by man / an example of suche thynges as may be lernyd by speculacyon appe-

ryth thus: sinderesis saythe that euery hole thyng is more then any one parte of the same thyng / and that is a sure grounde that neuer fayleth. And an example of thynges that are to be done / or not to be done: is Where sinderesis sayth: no euyl is to be done: but that goodnes is to be done and folowed / & euyl to be fledde and suche other. And therefore sinderesis is called by some mē the law of reason / for it mynystreth the pryncples of the lawe of reason / the whiche be in euery man by nature in that he is a reasonable creature.

Of reason. The. xiiii. chapytre.

**D**octoure) Whan the fyrste mā Adam was create / he receyued of god a double iye / that is to saye an outwarde iye / wherby he myght se vysyble thynges / and knowe his bodely enemyes and eschewe theym. And an inward iye / that is the iye of reason / wherby he myghte se his spyrytuell enemyes that fyghteth agaynst his soule and beware of them. And amonge all gyftes that god gaue to man /

## The. viii.

this gyfte of reason is the moſte nobleſt / for  
 therby man preceſſyth all beaſts / and is ma  
 de lyke to the dygnitie of aungellys / dyſcer  
 nyng trouth from falſhede / & euyl from  
 good. Wherefore he gothe farre from that ef  
 fecte that he was made to When he taketh  
 not hede to the trouth: or When he preferreth  
 euyl byfore good. And therfore after Doc  
 tour's reason is that power of the ſoule / that  
 dyſcernyth betwene good and euyl / and by  
 twene good and better comparynge the one  
 to the other: the Whiche alſo cheiſyth Ver  
 tues / louyth god / and fleeth Vyces. And re  
 aſon is called ryght Wyſe and good / for it is  
 conformable to the Wyll of god and that is  
 the fyrſte thyng & the fyrſte reule that all  
 thynges muſt be ruled by / and reaſon that  
 is not ryght Wyſe nor ſtraite: but y<sup>t</sup> is ſayd  
 culpable is eyther bicauſe ſhe is deceyued  
 With an errour that myght be overcome / or  
 els through her pryde or ſlothfulnes ſhe en  
 queryth not for knowleg of the trouth that  
 ought to be enquired. Alſo reaſon is deuy  
 ded in to two parties / that is to ſaye in to  
 the hygher parte / and in to the lower parte.  
 The hygher parte hedyth heuently thynges  
 eternall. And reaſonyth by heuently lawes

es / or by heuenly reasons What is to be don  
 and What is not to be don. And What thyn  
 ges god comaundeth / and What he prophy  
 byteth. And this hygher pte of reason hathe  
 no regarde to transytory thynges / or tem  
 porall thyng: but that somtyme as it were  
 by maner of councyll she bryngeth forth  
 heuenly reasons / to ordeine Welk temporall  
 thynges. The lower parte of reason work  
 kyth moste to gouerne Welk temporall thyn  
 ges. And she groundeth her reasons moche  
 vpon lawes of man / and vpon reason of  
 man wherby she concludyth that that is to  
 be done that is honest and expedyent to the  
 comon welth / or not to be done for it is not  
 expedyent to the comon welth. And so that  
 reason wherby I knowe god & suche thyn  
 ges as pertyne to god / bylongeth to the  
 hygh ste parte of reason. And that reason  
 wherby I knowe creatures bylongyth to  
 the lower parte of reason. And though these  
 two pannes / that is to say the hygher parte  
 & the lower parte be don in dede & essence /  
 yet they dyffer by reason of theyr workyng  
 and of theyr offyce as it is of one selfe eye:  
 that somtyme lookyth vpwarde / and som  
 tyme downewarde.

The. xv.

Of conscience. The. xv. chapytre.



Doctoure) This worde cō-  
science / Whiche in laten is  
called conscientia is com-  
pounded of this preposici-  
on: cum / that is to say in  
englysshe: With / and With  
this nowne scientia / that is to saye in en-  
glysshe knowlege / and so conscience is as  
moche to say as a knowlege of one thyng  
With another thyng / and conscience so ta-  
ken is no thyng els / but an applyenge of  
any science or knowlege to some particu-  
lar acte of man. And so cōscience may som-  
tyme erre / and somtyme not erre. And of cō-  
science thus taken Doctoures make many  
dyscrypcyons / Wherof one doctoure saythe  
that conscience is the lawe of oure Under-  
standyng. Another that conscience is an  
habyte of the mynde dyscernyng byt Wyt  
good and euyl. Another that conscience is  
the Iugement of reason Iugyng on the  
particular actes of man / all Whiche sayen-  
ges agre in one effecte / that is to saye that  
conscience is an actuall applyenge of any  
cunnyng or knowlege to such thynges as

be done / Whereupon it foloweth that Upon  
 the moſte parfyte knowlege of any law or  
 cunnynge. And of the moſte parfyte and  
 moſt true applyeng of the ſame / to any pty  
 culer acte of man: foloweth the moſt pfyte  
 the moſt pure and the moſte beſte conſcience  
 And yf there be defaute i knowynge of the  
 trouth of ſuche a lawe / or in the applyenge  
 of the ſame to any partyculer acte then ther  
 upon foloweth an errour / or defaute in con  
 ſcience / as it may appere by this example /  
 Sideres myſteryth a vnyuerſall pryn  
 ciple that neuer erryth / that is to ſay that an  
 vnlawfull thyng is not to be done. And  
 then it might be taken by ſome mā that eue  
 ry othe is vnlawfull bycauſe oure Lorde  
 ſayth Math. v. ye ſhall in no wyſe ſwerc.  
 And yet he that by reaſon of the ſayd wor  
 des wyl hold that it is not lawfull in no ca  
 ſe to ſwerc / erryth in conſcience / for he hath  
 not the parfyte knowlege and vnderſtan  
 dyng of the trouth of the ſayd goſpell / nor  
 he reduceth not that ſayenge of ſcripture /  
 to other ſcriptures / in whiche it is graunted  
 that in ſome caſe an othe may be lawfull /  
 & the cauſe why conſcience maye ſo erre in  
 the ſayd caſe & in other lyke / is bycauſe con

The. xv.

science is formed of a certayne particuler  
 proposicion or questyon groundyd vpon  
 vniuersall rules ordayned for such thyng  
 ges as are to be done. And bycause a particu  
 culer proposicion is not knowen of hym  
 selfe / but muste appere and be serchyd by a  
 dyligent serche of reason / therfore in that  
 serche and in the cōscience that shuld be for  
 med therupon may happen to be erroure / &  
 therupon it is sayde that there is erroure in  
 conscience / Whiche errour cometh eyther by  
 cause he dothe not assent to that he ought to  
 assent vnto / or else by cause his reason wher  
 by he dothe referte one thyng to another is  
 dysceyued / for further declaracyon whe of  
 it is to vnderstande that errour in conscien  
 ce cometh. In maner of wayes . ffirste is  
 throughe ygnorance / and that is when a  
 man knoweth not what he ought to do / &  
 what he ought not to do. And then he ought  
 to aske counceyll of them that he thynketh  
 moste experte in that science wherupon his  
 doute ryseth . And yf he can have no coun  
 ceyl / then he muste holly comyt hym to god  
 And he of his goodnes wyll so ordie hym /  
 that he wyll saue hym from offence. The se  
 conde is throughe necligēce / as when a mā

is necllygent to serche his owne conscience/  
 or to enquire the trowth of other. The thyrde  
 is throughe pryde as when he wyll not me/  
 kyn hym selfe ne byleue them that be better  
 & wyser then he is. The fourth is throughe  
 syngularyte as when a man foloweth his  
 owne wyte / & wyll not conferme hym selfe  
 to other / nor folowe the good comon wayes  
 of good men. The fyfte is throughe an in  
 ordynat affectyon to hym selfe / wherby he  
 maketh conscience to folowe his desyre / & so  
 he causyth her to go out of her ryght course.  
 The syxt is throughe pusillanymyte wher/  
 by some persone dredyth ofte tymes suche  
 thynges as of reason he ought not to drede.  
 The. seuynth is throughe perplexytie / & that  
 is when a man byleueth hym selfe to be so  
 set byt wyte two synes that he thynketh it  
 vnpossyble / but y<sup>e</sup> he shal fall i to the one /  
 but a mā can neuer be so propretyd in dede  
 but throughe an errour in conscience: and yf  
 he wyll put a way that errour he shal be de  
 lyuerted. Therfore I praye the that thou  
 wyte al wayes haue a good conscience and  
 yf thou haue so / thou shalt al wayes be me/  
 ty / and yf thyne owne herte reproc the not  
 thou shalt al wayes haue in warde peace.

The. xv.

science is formed of a certayne particuler  
proposicion or questyon groundyd vpon  
vniuersall rules ordayned for such thyn  
ges as are to be done. And bycause a particu  
lar proposicion is not knowen of hym  
selfe / but muste appere and be serchyd by a  
dyligent serche of reason / therfore in that  
serche and in the conscience that shuld be for  
med therupon may happen to be erroure / &  
therupon it is sayde that there is erroure in  
conscience / Whiche errour cometh eyther by  
cause he dothe not assent to that he ought to  
assent vnto / or else by cause his reason wher  
by he dothe referte one thynge to another is  
dysceyued / for further declaracyon wherof  
it is to vnderstande that errour in conscien  
ce cometh. In maner of Wayes . fyrste is  
throughe ygnorance / and that is when a  
man knoweth not what he ought to do / &  
what he ought not to do. And then he ought  
to aske counceyll of them that he thynketh  
moste experte in that science wherupon his  
doute ryseth . And yf he can have no coun  
ceyll / then he muste holly comyt hym to god  
And he of his goodnes wyll so ordre hym /  
that he wyll saue hym from offence. The se  
conde is throughe necligēce / as when a mā

is necligent to serche his owne conscience/  
 or to enquire the trowth of other. The thyrde  
 is through pryde as when he wyll not me/  
 kyn hym selfe ne byleue them that be better  
 & wyser then he is. The fourth is through  
 synfularitie as when a man foloweth his  
 owne wyll & wyll not conserme hym selfe  
 to other / nor folowe the good comon wayes  
 of good men. The fyfte is through an in/  
 ordynat affectyon to hym selfe / wherby he  
 maketh conscience to folowe his desyre / & so  
 he causyth her to go out of her ryght course.  
 The syxt is through pusillanymyte wher/  
 by some persone dyedyth ofte tymes suche  
 thynges as of reason he ought not to dede.  
 The seuynth is through perplexite / & that  
 is when a man byleueth hym selfe to be so  
 set byt wyth two synes that he thynketh it  
 vnpossyble / but y<sup>e</sup> he shal fall i to the one /  
 but a mā can neuer be so perplexyd in dede  
 but through an errour in conscience: and yf  
 he wyll put a way that errour he shal be de/  
 lyuerd. Therfore I praye the that thou  
 wylte al wayes haue a good conscience and  
 yf thou haue so / thou shalt al wayes be me/  
 ty / and yf thyne owne herte reprove the not  
 thou shalt al wayes haue in warde peace.

The. p. B.

The gladnes of ryght wyse men is of god  
and in god / and theyr Joye is alwayes in  
trouth and goodnes. There be many dyuer  
sytyes of consyence / but there is none better  
then that / wherby a mā trewely knoweth  
hym selfe / many men knowe many great &  
hygh cūnyng thyngs: & yet know not them  
self / and trewely he that knoweth not hym  
selfe knoweth no thyng well. Also he hath  
a good and a clene consyence / that hath pu  
rtye and clenness in his herte / trouth in his  
worde / & right wysenes in his dede. And as  
a lyght is sette in a lanterne that all that is  
in the house may be seen therby / so almygh  
ty god hath sette consyence in the myddes  
of euery resonable soule as a lyght wherby  
he may dyscerne and know what he ought  
to do: and what he ought not to do. Therfo  
re fo: as moche as it behouyth the to be occu  
pyed in such thyngs as pertyne to the law.  
It is necessarye that thou euer holde a pure  
and a clene consyence specyallye in suche  
thyngs as concerne restytucyon for the syne  
is not forgyuen: but the thyngge y<sup>t</sup> is wrong  
fullye taken be restorpd. And I counceyll  
the also that thou loue that is good / & fflye  
that is euyl / and that thou do to another as

thou Woldest shuld be done to the / and that thou do no thyng to other that thou Woldest not shuld be done to the. That thou do no thyng agaynst trouthe / that thou lyue peaseablye With thy neyghboure / and that thou do Justyce to euery man as moche as in the is. And also that in euery generall rule of the lawe / thou do obserue & kepe equitye / and yf thou do thus I trust the lyght of thy lanterne / that is thy cōscyēce shal neuer be extyncted. ¶ (Student) but I praye the shewe me what is that equitye y<sup>e</sup> thou hast spokē of byfore: and that thou Woldest that I shulde kepe. ¶ (Doctoure) I Wylle With good Wylle shewe the somwhat therof.

¶ What is equitye. The. xv. chapytre.

¶ (Doctoure) Equitye is a ryght wyse: nes that consideryth all the ptyculer cōcūstaūces of the dede / the Whiche also is tēperyd With the swētnes of mercye. And suche an equitye must alway be obseruyd in euery lawe of man / and in euery generall reule therof / & that knewe he wel that sayd thus. Lawes couet to be redelyd by equitye. And the Wyse man sayth: be not

The. xvi.

our moche ryght wyse for: the extreme ryght  
 wysenes is extreme wronge / as who sayth  
 yf thou take all that the wordes of the law  
 gyveth the thou shalt somtyme do agaynst  
 the lawe. And for the playner declaracyon  
 what equitytie is thou shalt vnderstande that  
 syth the dedes and actes of men / for whiche  
 lawes ben ordayned shypen in divers man-  
 ners in synnytye. It is not possyble to make  
 any generall rewle of the lawe / but that it  
 shall fayle in some case. And therfore ma-  
 kers of lawes take hede to suche thynges as  
 may often come and not to euery particuler  
 case / for they coulde not though they wolde  
 And therfore to folowe the wordes of the  
 lawe / were in some case both agaynst Ju-  
 stice & the comon welth: Wherefore in some  
 cases it is necessary to leue the word of the  
 lawe / & to folowe that reason and Justice  
 requyrieth / & to that intent equitytie is orday-  
 ned / th it is to say to tempere and mytrygate  
 the rygoure of the lawe. And it is called al-  
 so by some men epicuria. The whiche is no  
 other thyng but an excepcyon of the lawe  
 of god / or of the lawe of reason / from the  
 generall rewles of the lawe of man: When  
 they by reason of theyr generaltye wolde

in any partyculer case Iudge agaynste the  
la we of god / or the la we of reason / the whi  
che expection is secretly vnderstāde in eue  
ry generall rewele of euery posytyue la we.  
And so it apperyth that equitye takyth not  
away the very ryght / but only that that se  
myth to be ryght by the generall wordes of  
the la we / nor it is not ordayned agaynste  
the cruelnes of the la we for the la we in such  
case generallye taken is good in hym selfe /  
but equitye folowyth the la we in al party  
culer cases where ryght and Justyce requy  
reth / nor wythstādynge that a general rewe  
le of the la we be to the cōtrary / wherfore it  
apperyth that yf any la we were made by  
man without any suche expection expres  
syd or implied it were manifestly vnreson  
nable / & were not to be sufferyd / for suche  
cases myght come that he that wolde obser  
ue that la we shuld breke both the la we of  
god / and the la we of reason. As yf a man  
make auowe that he wyll neuer eate why  
te meate / & after it happenyth hym to come  
there where he can gette none other meate.  
In this case it behouyth hym to breke his a  
uowe for that partyculer case is exceptyd se  
cretly from his general auowe by this equitye

The. xvi.

tie or epykay as it is sayd byfore. Also yf a  
lawd were made in a cytie that no man vn  
der the payn of deth shuld open the gates of  
the cytie byfore the sonne rysynge / yet yf the  
Cytizens byfore that houre fleyng from  
theyr enemyes come to the gates of the cytie  
& one for sauynge of the cytyzens openyth  
the gates byfore the houre appoynted by the  
lawe: yet he offendyth not the lawd / for that  
case is exceptyd from the sayd general lawd  
by equitye as is sayd byfore / and so it appea  
ryth that equitye rather foloweth the intent  
of the lawe / then the wordes of the lawe.  
And I suppose that there be in lyke wyse  
some lyke equityes groundyd vpon the ges  
nerall redles of the lawe of the realme.  
(Student) ye verily wherof one is this.  
There is a generall prohibycyon i the law  
es of Englande: that it shal not be lawdfull  
to no man to entre in to the freholde of ano  
ther without auctorytie of the owner or of  
the lawd / but yet it is exceptyd from the say  
de prohibycyon by the lawe of reason: that  
yf a man dryue beestes by the hyghe way &  
the beestes happen to escape in to the corne  
of his neyghbour. And he to brynge out his  
beestes that they shuld do no hurte gothe in

to the grounde and fetteth out the beest: the  
re he shall Justyfie that entre in to the groun  
de by the lawe. Also not Withstandyng the  
statute of Edward the thyrde made the.  
xxii. yere of his reygny / Wherby it is ordain  
ed that no mā vpon payne of imprysone  
ment shuld gyue any almesse to any Valy  
ant begger / that is Well able to labour: yet  
yf a man mete With suche a Valyant beg  
ger in so colde a Wether and so lyght appa  
rell / that yf he haue no clothes he shall not  
be able to com to no to Wne to haue succour:  
but is lykely rather to dye by the Waye / & he  
therfore gyueth hym apparell to saue his ly  
fe he shall be excused of the sayde statute by  
suche an expection of the lawe of reason as  
I haue spoken of. (Doctoure) I knowe  
Well that as thou sayst he shall be exceptyd  
of the sayd statute by consyence / and ouer  
that y<sup>t</sup> he shali haue great rewarde of god /  
for his good dede / but I wolde wytte whe  
ther the partie shal be also dischargyd in the  
cōmon lawe by suche an expection of the  
lawe of reason or not / for though ygnorau  
ce inuincyble of a statute excuse the partie  
agaynst god / yet as I haue herde it excus  
yth not in the lawes of the realme / ne yet

The. p. vi.

In the Chauncerye as some say all thowghe  
the case be so that the partie to Whom the for  
fayture is gyuen may not With conscyence  
leue it. ¶ Student) Vercly by thy questy/  
on thou haste put me in a great doute / Wher  
fore I pray the gyue me a respyte therin to  
make the an answere but as I suppose for  
the tyme how be it I Wyll not fully affect/  
me it to be as I saye / but it shuld seme that  
he shulde wele plede it for his dyscharge at  
the comon lawe / bycause it shall be taken  
that it Was the intent of the makers of the  
statute to excepte suche cases. And the Jus  
ges may many tymes Juge after the myn  
de of the makers as farre as the lettre maye  
suffre and so it semyth they may in this case  
And dyuers other exccpyons there be also  
from other generall groundes of the lawe  
of the realme by suche equityes as thou hast  
remembred byfore that Were to longe to re  
herce now. ¶ Doctoure) but yet I pray the  
shewe me shortlye somewhat more of thy  
mynde Vnder What maner a man may be  
holpen in this Realme by suche equitye.  
¶ Student) I Wyll. With good Wyll shew  
we the somewhat therin.

**I**n what maner a man shal be holpen  
by equytyes in the lawes of Eng/  
lande. The. xvii. chappytre.



**Student)** fyrste it is to  
be vnderstande / that be  
i many cases dyuers ex/  
cepcyons from the gene/  
rall groudes of the law  
of the Realme / by other  
reasonable groudes of  
the same lawe / wherby a man shal be hol/  
pen in the comon lawe / as it is of this gene  
rall grounde that it is not lawfull for no  
man to entre vpon a dyscent / yet the reso/  
nablenes of the lawe exceptyth from that  
grounde an insaunte that hathe ryght and  
hath sufferyd suche a dyscent / and hym al/  
so that makyth continuell clayme / and suf  
feryth them to entre / not withstaundyng the  
dyscent. And of that excepcion they shal ha  
ue auantage in the comon lawe / and so it  
is lyke wyse of dyuers statutes as of the sta  
tute wherby it is pphibyt / that certayne par  
tyculer tenautes shal do no waste / yet yf a  
lease for terme of yeres be made to a ensaunt  
that is within yeres of dyscrecion: as of the

The. p vii.

age of. v. or. vi. yerres / and a straunger do  
Waste in this case / this enfaunte shal not be  
punysshed for the Waste / for he is exceptyd  
and excused by the lawe of reason . And a  
Woma couerte to Whom suche a lease is ma  
de after the couerture shall be also dyschar  
ged of wast after her husbāds deth by a rea  
sonable maxyme & custome of the realme /  
And also for reparacyōs to be made vpon  
the same grounde: it is lawfull for suche par  
tyculer tenaūtes to cutte down trees vpon  
the same grounde to make reparacions. But  
the cause ther as I suppose is for y<sup>e</sup> the myn  
de of the makers of the sayd estatute shalbe  
taken to be that that case shuld be exceptyd  
And in all these cases the partyes shall be  
holpen in the same courte and by the cōmō  
lawe. And thus it apperyth that somtyme  
a man maye be exceptyd fro the rygoure of  
a maxyme of the law by another maxyme  
of the lawe . And somtyme fro the rygoure  
of a statute by the lawe of reason / and som  
tyme by the intent of the makers of the sta  
tute / but yet it is to vnderstande that most  
cōmonly Where any thynge is exceptyd fro  
the generall customes or maxymes of the  
lawes of the realme / by the lawe of reason

the partie must haue his remedye by a Wryt that is called sub pena. Yf a subpena lye in the case: but Where a sub pena lyeth / & Where not it is not our intent to treate of at this tyme. And in some case there is no remedye for suche an equytie by Waye of compulssion / But all the remedye therein muste be committed to the conscience of the partie.

**(Doctoure)** but in case Where a sub pena lyeth to Whom shall it be dyrectyd: Whether to the Iuge or to the partie. **(Student)** It shall neuer be dyrectyd to the Iuge / but to the partye pleyntyfe / or to his attorney and therupon an iniunction comaūdyng them by the same Vnder a certayne payne therein to be contayned that he procede no farther at the cōmon lawe / tyll it be determyned in the kynges Chaucerye / Whether the pleyntyfe hath tittle in conscience to recouer or not. And Whan the pleyntyfe by reason of suche an iniunction seassyth to aske any farther pcesse: the Iuges Wyll in lyke wyse seasse to make any farther processe in that behalfe. **(Doctoure)** is there any mencion made in the lawes of Englande of any suche equyties. **(Student)** of this terme / equytie to that intent that it is spoken of here: the

The. p. vii.

re is no mencyon made in the lawes of Eng  
lande: but of an equytie dyruyed vpon cer  
tayne statutes mencyon is made many ty  
mes and often in the lawe of Englande:  
But that equytie is all of another effecte  
then this is: but of the effecte of this equytie  
that we nowe speke of mencyon is made  
many tymes / for it is ofte tymes argued in  
the lawe of Englande where a sub pena ly  
eth and where not: and dayly bylles be ma  
de by men lernyd in the lawe of the realme  
to haue sub penas. And it is not prohybte  
by the lawe: but that they may well do it so  
that they make them not / but in case where  
they ought to be made / and not for vepacy  
on of the ptye / but accordynge to the trouth  
of the mater. And the lawe wyll in many  
cases that there shal be suche remedye in the  
Chaucerye vpon dyuers thynges groun  
dyd vpon suche equyties. And then the lor  
de Chauceller must ordie his cōscyence af  
ter the reules and groundes of the lawe of  
the realme / in so moche that it had not ben  
moche incōuenient to haue assygned suche  
remedye in the Chaucerye vpon suche equy  
ties for the. vii. grounde of the lawe of eng  
lande / but for as moch as no recorde remay

neth in the kynges courtes of no suche bylle  
ne of the Wrytte of sub pena or iniuncyon  
that is supd therupon / therfore it is not sette  
as for a specciali grounde of the la we / but  
as a thyng that is suffred by the la we.

**(Doctoure)** then sythe the partyes oughte  
of ryght in many cases to be holpen in the  
Chaucerpe vpon suche equyties. It se/  
myth that yf it were ordayned by statute/  
that there shuld be no remedye vpon suche  
equyties in the Chaucerpe / nor in none o/  
ther place / but that every mater shuld be or/  
deryd onely by the re wles and groundes of  
the comon la we / that that statute were a/  
gaynst ryght and conspence. **(Student)**  
I thynke the same / but I suppose there is  
no suche statute. **(Doctoure)** there is a sta/  
tute of that effete as I haue herde saye/  
Wherin I wolde gladly here thy oppyny/  
on. **(Student)** shewe me that statute / and  
I shall With good Wyll saye as me thyn/  
keth therein.

**(Whether the statute herafter reserayd  
by the Doctoure be agaynst consp/  
ence or not. The. p. viii. chapptre.**

The. p Bill.



Detour) There is a statute made in the. iiii. yere of kyng Henry the. iiii. the xxii. chapyte / Wherby it is enacted that Iugementes gyuen i the kyngs courttes / shall not be examyned in the L hauncerpe / Parlyament / nor els Where / by Which statute it appereth that yf any Iugemēt be gyuen in the kyngs court; agaynst an equytie / or agaynst any mater of cōscience / that there can be had no remedye by that equytie for the Iugemēt can not be reformed without examynacion / and the examynacion is by the sayd statute proshybt / Wherfore it semeth that the sayd statute is agaynst conscience / What is thyne oppynyon therin.

(Student) Yf Iugementes gyuen in the kynges courttes shulde be examyned in the L hauncerpe / By fore the kyngs councyll or in any other place / the playntyses or demaunders shuld seldom come to the effecte of theyr sute / ne the lawe shulde neuer haue ende. And therfore to eschewe that inconuenience that statut was made. And though peradventure by reason of that statute / some synguler persone may happen to haue losse.

Nevertheless the sayd statute is Very neces-  
 sarye to escheue many great Depacyons &  
 Vniust expences that wolde els com to ma-  
 ny playntyfes that haue ryght wysely reco-  
 ueryd in the kynges courtes. And it is mo-  
 che more prouyded for in the lawe of Eng-  
 lāde that hurte nor damages shuld not com-  
 to many then onlye to one. And also the  
 sayd statute doth not prohybyt equitye / but  
 it prohybyteth only the exampynacion of the  
 Iugement / for the escheuynge of the incon-  
 uenience byfore reheryd. And so it semyth  
 that the sayd statute standeth With good cō-  
 scyence. And in many other cases Where a  
 man doth Wronge / yet he shall not be com-  
 pellyd by Waye of compulsyon to reforme  
 it / for many tymes it muste be lefte to the cō-  
 scyence of the ptie. Whether he Wyll redresse  
 it or not. And in suche case he is in conscy-  
 ence as Well boude to redresse it yf he Wyll sa-  
 ue his soule / as he Were yf he Were compel-  
 lable therto by the lawe as it maye appere  
 in dyuers cases that maye be put vpon the  
 same ground. ¶ Doctoure) I pray the put  
 some of those cases for an example. ¶ Stu-  
 dent) Yf the defendaunte Wage his lawe in  
 an accyon of dette broughte vpon a trewe

The. viii.

dette the pleyntyfe hath no meanes to come to his dette by way of compulsyon neyther by sub pena nor other wyse / and yet the defendaut is bounde in cōscyence to pay hym. Also yf the graunde Jurye in atteynt afferme a false Verdyt gyuen by the petre Jurye there is no further remedy but the cōscyence of the partie. Also Where ther can be had no suffyeyent prouffe / there can be no remedye in the L hauncerye / no more then there may be i the spyrytuell court. And bycause thou haste gyuen an occasyon to speake of conscyence / I wolde gladly here thy oppynyon Where conscyence shall be rewdyd after the lawe / and Where the lawe shall be rewdyd after conscyence. ¶ (Doctoure) And of that mater I wolde lyke wyse gladly here thy oppynyon speccally in cases groundyd vpo the lawes of Englande / for I haue not herde but lytell therof in tyme past / but byfore thou put any cases therof: I wold that thou woldest shewe me how those two questiōs after thy oppynyon ar to be vnderstande.

¶ Of what lawe this questyon is to be vnderstande / that is to say Where cōscyence shall be rewdyd after the lawe. The. xix. chapytre.



**D**udent) the lawe wherof  
mencion is made in this que  
styon / that is to saye where  
conscience shall be redydyd  
by the lawe / is not as me se  
myth to be vnderstande only of the lawe of  
reason: and of the lawe of god. But also of  
the lawe of man that is not contrary to the  
lawe of reason nor the lawe of god: but that  
it is superaddyd vnto them for the better or  
dering of the comon welth / for: such a lawe  
of man is alwayes to be sette as a rule in  
conscience so that it is not lawfull for no  
man to go fro it on the one syde ne on the o  
ther / for: suche a lawe of man hath not only  
the strength of manes lawe / but also of the  
lawe of reason / or of the lawe of god / wher  
of it is dyuyded / for lawes made by man  
whiche haue receyued of god power to ma  
ke lawes be made by god. And therfore co  
science muste be orderyd by that lawe / as it  
muste be vpon the lawe of god / and vpon  
the lawe of reason. And furthermore that  
lawe wherof mencion is made in the latter  
ende of the chapyt next byfore: that is to say  
in that questyon wherin it is askyd where  
the lawe is to be leste and forsaken for con

The. xij.

science / is not to be vnderstāde of the law  
of reason nor of the law of god: for tho t wo  
lawes maye not be lefte / nor it is not to be  
vnderstāde of the lawe of man that is ma  
de in partyculer cases / and that is cōsonant  
to the lawe of reason / & to the lawe of god /  
and that yet that lawe shuld be lefte for cō  
science / for of suche a lawe made by man  
conscience muste be rewlýd as is sayde by /  
fore: nor it is not to be vnderstāde of a law  
made by man cōmaūdyng or prohybytyng  
any thyng to be done that is agaynst the  
lawe of reason / or the lawe of god . For yf  
any lawe made by man / bynde any person  
to any thyng that is agaynst the sayd law  
es / it is no lawe / but a corrupcyon & a ma  
nyfest errour . Therfore after them that be  
lernyd in the lawes of Englande / the sayd  
questyon / that is to saye Where the lawe is  
to be lefte for conscience and Where not / is  
to be vnderstande in dyuers maners / and  
after dyuers rewlcs as hereafter shall som  
what be touchyd.

**T**hyrste many vnlernyd personcs bylene  
that it is lawfull for them to do with good  
conscience / all thynges whiche yf they do  
them / they shall not be punysshed therfore

By the lawe: though the lawe doth not warraunt them to do y<sup>e</sup> they do / but only when it is done dothe not for some reasonable consyderacyon punyssh the hym that doth it / but leuyth it only to his cōscyence. And therefore many psones do oft tymes that they shuld not do: & kepe as theyr owne that / that in cōscyence they ought to restore. Wherof there is in the lawes of Englande this case.

**I**f two men haue a wood ioyntly / & the one of them sellyth the wood and keepyth al the money hollye to hym selfe. In this case his felowe shall haue no remedye agaynst hym by the lawe / for as they whē they take the wood ioyntly put eche other in truste / & were cōtentyd to occupy together: so the lawe sufferyth them to order the ppyttes therof accordynge to the truste that eche of them put other in. And yet yf one take all the ppyttes / he is bounde in consyence to restore the halfe to his felowe / for as the lawe gyueth hym ryght onelye to the halfe lande / so it gyueth hym ryght onelye in consyence to the half ppyttes. And yet neuertheles it can not be sayd in that case / that the lawe is agaynst cōscyence / for the lawe neyther wyllyth ne cōmaundyth that one shuld take all

### The. xix.

the profyttes / but leuyth it to theyr conscyence / so that no defeaute can be founde in the la we: but in hym that takyth all the profyttes to hym selfe maye be assygned defeaute / Whiche he is bounde in cōscyence to reforme yf he wyll saue his soule / though he can not be compellyd therto by the la we. And therefore in this case & other lyke / that oppynyon Whiche some haue that they may do With cōscyence all that they shall not be punysshed for by the la we yf they do it: is to be lefte for conscyence / but the la we is not to be lefte for conscyence.

### ¶ Also yeyon.

¶ Also many men thynke that yf a mā haue lande that another hath tytle to / yf he y<sup>e</sup> hath the ryght shall not by the accyon that is gyuen hym by the la we to recouere his ryght by: recouere damagges: that then he that hath the lande is also dyschargyd of damages in conscyence / And that is a great error in conscyence / for though he can not be compellyd to yelde the damages by no mānes la we / yet he is compellyd therto by the la we of reason & by the la we of god / wher by we be bounde to do as we wolde be don to / and that we shall not coueyte our neygh

hous good. And therefore yf tenaunt in tayl  
be dyssesyd and the dyscasoure dyeth sea  
syd / and then the heyre in the tayle bryngeth  
a foundon and recoueryth the lande / and  
no damages / for the lawe gyueth hym no  
damage in that case: yet the tenaunt by con  
science is bounden to yelde damages to the  
heyre in tayl fro the deth of his auncestre.

¶ Also it is taken by some men / y<sup>t</sup> the lawe  
muste be lefte for cōscience where the lawe  
doth not suffre a man to denye that he hath  
byfore affermyd i courte of recorde: or for y<sup>t</sup>  
he hath wylfullye excludyd hym selfe ther  
of for some other cause / as yf the daughter  
that is only heyre to her father wylle sue ly  
uerey with her suster that is bastarde i that  
case / she shall not be after receyued to saye  
that her suster is bastarde: In so moche that  
yf her suster take halfe the lande with her /  
there is no remedy agaynst her by the lawe.  
And no more there is of dyuerse other esto  
pellys / whiche were to lōge to reherce now  
And yet the partye that may take auanta  
ge of suche an estoppel by the lawe / is boun  
de in cōscience to forsake that auantage spe  
cially yf he were so estopped by ygnorau  
ce: and not by his owne knowlege & assent

The. xix.

for though the lawe in suche cases gyueith  
no remedye to hym that is estoppyd / yet the  
lawe Jugeth not that the other hath the ryght  
vnto the thyng that is in varyaunce by  
wryt theym

**A**lso it is vnderstande that the lawe is  
to be lefte for consyence / where a thyng is  
tryed & foude by verdyt agaynst the trowth  
for in the comon lawe the Jugement must  
be gyuen accordynge as it is pleadyd & trye  
ed lyke as it is in other lawes / that the Juge  
mente muste be gyuen accordynge to that  
that is pleadyd and prouyd.

**A**lso it is vnderstande that the lawe is  
to be lefte for consyence where the cause of  
the lawe dothe cease / for when the cause of  
the lawe doth cease / the lawe also doth cea  
se in consyence as apperyth by this case he  
re after folowynge.

**A**ddycyon.

**A** man maketh a lease for terme of lyfe /  
and after a straunger doth waste / wherefore  
the lessee bryngeth an accyon of trespassse &  
hath Jugement to recouer damages hauyn  
ge regarde to the treble damagge that he shal  
yelde to hym in the reuercyon. And after he  
in the reuercyon byfore accyon of wast sued

dyeth so that the accyon of Waste is therby  
 exynctyd / then the tenaunt for terme of ly  
 fe (though he maye se the execucion of the  
 sayd Jugemēt by the lawe) yet he may not  
 do it by cōscyence / for in cōscyēce he may ta  
 ke no more then he is hurted by the sayd tres  
 passe / bycause he is not chargyd ouer with  
 the treble damages to his lessoure.

**C** Also it is vnderstande where a lawe is  
 groundyd vpon a presumpcyon / for yf the  
 presumpcyon be vntrewe, then the lawe is  
 not to be holden in conscyence. And now  
 I haue shewyd the somwhat how that que  
 styon / that is to say where the lawe shal be  
 trewled after conscyence / I pray the shewe  
 me whether there be not lyke dynctyities in  
 other lawes byt wyth lawe and cōscyence.

**C** Doctoure) Yes verily very many wher  
 of thou haste recyted one byfore / where a  
 thyng that is vntrewe is pleadyd and pro  
 uyd / in whiche case Jugement muste be gy  
 uen accordynge as well in the lawe & ywyle  
 as in the lawe canon. And another case is  
 that yf the heyre make not his inuentorye /  
 he shall be bounde after the lawe & ywyle /  
 to all the dettes though the goodes amount  
 not to so moche. And the lawe Canon is

The. viij.

not agaynst that law / and yet in cōscience  
the heyre whiche in the lawes of Englande  
is called an executour is not i that case char  
gyd to the dettes / but accordynge to the va  
lue of the goodes . And nowe I praye the  
shewe me some cases where cōscience shal  
be redwyd after the lawe . ¶ Student ) I  
wylle with good wyll shewe the som what  
as me thynketh therin .

¶ Here foloweth dyvers cases where  
cōscience is to be orderyd after  
the lawe . The. xij. chapytre.



¶ Student ) The eldest so  
ne shall haue and enioy  
his fathers landes at the  
cōmon lawe in cōscyen  
ce / as he shal i the lawe .  
And in burghenglyssh  
the yonger sone shall en  
ioy the inherytaunce / and that in cōscience  
And in gavelkynde all the sones shall inhe  
ryt the lande togyther as doughters at the  
cōmon lawe & that in cōscience . And there  
can be none other cause assygged why cōs  
science in the fyrste case is with the eldest

brother / & in the secōde With the yonger bro-  
ther / and in the thyrde case With all the bre-  
therne / but bycause the la we of Englande  
by reason of dyuers customes doth somtyme  
me gyue the lande hollye to the eldest sone /  
sometyme to the yongest / & somtyme to all.

¶ Also yf a man of his mere mocyon make  
a feffement of two acres of lande lyinge in  
two seuerall shyres / and makyth lyuerey  
of season in the one acre in the name of both  
In this case the feffe hathe ryght / but on-  
lye to y<sup>e</sup> acre wherof lyuerey of season was  
made bycause he hath no tittle by the la we /  
but yf both acres had ben i one shyre he had  
had good ryght to bothe. And in these cases  
the dyuersytye of the la w makyth the dyuers  
sytye of consyence.

¶ Also yf a man of his mere mocyon make  
a feffement of a maner & sayth not to haue  
& to holde. &c. With the appurtynaunces in  
that case the feffe hath ryght to the demesne  
landes & to the rentes / yf there be atturna-  
ment and to the cōmons pteynynge to the  
maner: but he hathe nother ryght to the ad-  
uowsons appendaunt yf any be / nor to the  
Vylleyns regardāt / but yf this terme With  
thappurtynaunces had ben in the dede / the

feffe had had ryght in conscyence as well to the aduowsons and bylleyues / as to the re syde we of the maner: but yf the kynge of his mere mocyon gyue a maner with the appurtynaunces / yet the donee hath neyther ryght in la we nor conscyence to the aduowsons nor bylleyues. And the dyuersytye of the la we in these cases makyth the dyuersytye of conscyence.

**A**lso yf a man make a lease for terme of yeres yeldyng to hym & to his heyres a certayne rent vpon condycyon that yf the rent be behynde by .xl. dayes. &c. that then it shal be lawfull to the lessour and his heyres to rentre. And after the rent is behynde the lessour askyth the rent accordyng to the la we & it is not payde / the lessour dyeth his heyre entreth. In this case his entre is lawfull both in la we & conscyence / but yf the lessour had dyed byfore he had demaunded the rent. And his heyre demaundeth the rent / & bycause it is not payde he rentreth / In that case his rentre is not lawfull nother in la we nor in conscyence.

**A**lso yf the tenaunte in dower so we her lande and dye byfore her corne be ripe that corne in conscyence bylongeth to her execut

fourres / & not to hym in the reuercyon / but  
other wyse it is i cōscyēce of grasse & frutes  
And the dyuersytie of the law makyth ther  
also the dyuersytie in conscyence.

**C** Also yf a man seased of landes in his de  
mesne as of fee / byquethyth the same by his  
last Wyll to another / and to his heires and  
dyeth / In this case the heyre not withstan  
dynge the Wyll hathc ryght to the lande in  
conscyence. And the reason is bycause the  
lawe Judgeth that Wyll to be voyde / and  
as it is voyde in the lawe / so it is voyde in  
conscyence.

**C** Also yf a man graunte a rente for terme  
of lyfe & make a lease of lande to the same  
graunte for terme of lyfe. And the tenaunt  
alyenyth both in fee. In this case he in the  
reuercyon hath good tytle to the lande both  
in lawe and conscyence and not to the rent:  
and the reason is bycause the lande by that  
alyenacyon is forfet by the lawe to hym in  
the reuercyon and not the rent.

**C** Addycyon.

**C** Also yf landes be gyuen to two men &  
to a woman in fe / and after one of the men  
entermarpyeth With the woman / and alye  
neth the lande & dyeth. In this the woman

The. xx.

hath ryght but only to the thyrde parte / But  
yf the man and the woman had ben marys  
ed toggyther byfore the fyrste ffeffement then  
the woman notwithstandinge the alyena  
cyon of her husbonde shuld haue had ryght  
in lawe and consyence to the one halfe of  
the lande. And so in these two cases consy  
ence doth folowe the lawe of the realme.

**A**lso yf a man haue two sones one byfo  
re spousellys and another after spousellys /  
and after the father dyeth seasyd of certayn  
landes. In that case the yonger sone shall  
enioye the landes in this realme as heyre to  
his father bothe in lawe and consyence.  
And the cause is bycause the sone borne aft  
er spousellys / is by the lawe of this realme the  
very heyre. And the elder sone is a bastard.  
And of these cases and many other lyke in  
the lawes of Englande may be fownd the  
Silogisme of consyence / or the trewe Iu  
gement of consyence in this maner: sinder  
is mynystreth the maior thus. Ryght wyse  
nesse is to be done to euery man: vpon whi  
che maior the lawe of Englande mynystreth  
the minor thus: the inherytaunce bylongeth  
to the sone borne after spousellys / & not to  
the sone borne byfore spousellys / then con

scyence maketh the conclusyon & sayth ther-  
 fore the inherytaunce is in conscyence to be  
 gyven to the sone borne after spousellys.  
 And so in other cases insynyte may be for-  
 myd by the lawe the Syllogisme or the ryght  
 Jugement of cōscyence: Wherfore they that  
 be lernyd in the lawe of the realme say that i  
 euery case where any lawe is ordeyned for  
 the dysposycion of lādes & goodes / whiche is  
 not agaynst the lawe of god / nor yet agaiſt  
 the lawe of reason / that y<sup>t</sup> lawe byndeth all  
 them y<sup>t</sup> be vnder the lawe i the courte of cō-  
 scyence / that is to say inwardly i his soule.  
 And therefore it is so what to meruayle that  
 spyrityuel mē haue not endeuyrd them self  
 in tyme paste to haue more knowlege of the  
 kynges lawes then they haue done / or that  
 they yet do / for by the ygnoraunce therof they  
 be oft tymes ygnoraunt of that / that shuld  
 ordre them according to ryght & Justyce: as  
 well consernynge them selfe as other that  
 come to them for counceyll. And now for  
 as moche as I haue answered to thy que-  
 styons as well as I can / I praye the that  
 thou wylte shewe me thy oppynyon in dy-  
 uers cases formyd vpon the lawe of Eng-  
 lande wherein I am in doute / what is to be

The. xxi.

holden therein in conscience. ¶ Doctoure) He  
We me thy questyons / and I Wyll saye as  
me thynketh therein.

¶ The fyrste questyon of the student.  
The. xxi. chapytre.

**S**tudent) yf an infaute that  
is of the age of. xx. yere and  
hath reason & wysdom to go  
uerne hym self sellyth his lā  
de and With the money ther  
of buyeth other lande of greater Value then  
the fyrst was and takyth the profyttes ther  
of / Whether may that infaute aske his fyrst  
lande agayne in conscience / as he may by  
the la we. ¶ Doctoure) What thynkest thou  
in that questyon. ¶ Student) me seemyth  
that for as moche as the la we of Englande  
in this attycle is groundyd vpon a presump  
cyon / that is to saye that infants com  
monly afore they be of the age of. xxi. yeres  
be not able to gouerne them selfe / that yet  
for as moche as that presumpcyon sayeth  
in this infaute that he may not in this cas  
se With conscience aske the lande agayne /  
that he hath solde to his great auantage as

Byfore apperyth. ¶ (Doctoure) Is not this  
 sale of the infaute and the seffement ma/  
 de therupon yf any were voydable in the  
 lawe. ¶ (Student) Yes verelye. ¶ (Docto<sup>r</sup>)  
 And yf the seffe haue no ryght by the bar/  
 gayne/nor by the seffement made therupon:  
 Wherby shulde he then haue ryght thereto as  
 thou thynkest. ¶ (Student) by cōscience as  
 me thynketh for the reason that I haue ma/  
 de byfore. ¶ (Doctoure) And vpon what  
 lawe shuld that cōscience be groundyd that  
 thou spekyest of / for it can not be groundyd  
 by the lawe of the realme as thou hast sayd  
 thy selfe. And me thynketh that it can not  
 be groundyd vpon the lawe of god/nor vpon  
 the lawe of reason / for seffementes nor con/  
 tractes be not groundyd vpon neyther of tho/  
 lawes / but vpon the lawe of man. ¶ (Stu/  
 dent) after the lawe of proprietye was ordai/  
 ned / the people myght not conueniently ly/  
 ue toggyther without contractes / and therfo/  
 re it semyth that cōtractes be groundyd vpon  
 the lawe of reason / or at the leste vpon the  
 lawe that is called *Ius gentium*. ¶ (Doc/  
 toure) though contractes be groundyd vpon  
 that lawe that is called *Ius gentium* / by/  
 cause they be so necessarye and so generall

The. xxi.

amonge all people / yet that prouyeth not that  
contractes be groundyd vpon the lawe of  
reason / for though the that lawe called Jus  
gentium be moche necessarye for the people  
yet it may be chaungyd. And therfore yf it  
were ordayned by statute that there shulde  
be no sale of lande / ne no cōtracte of goodes /  
and yf any were that it shuld be voyde / so  
that euery man shuld contynue styll sea-  
syd of his landes & possessyd of his goodes /  
the statute were good. And then yf a man  
agaynst that statute solde his lande for a  
summe of money / yet the seller myghte law-  
fully retayne his lande accordyng to the sta-  
tute. And then he were bounde to no more /  
but to repay the money that he receyued w<sup>th</sup>  
reasonable expences in that behalfe / and so  
in lyke wise me thynketh that in this case the  
infaunte may with good cōscience centre  
in to his fyrste lande because the cōtracte af-  
ter the maxymes of the lawe of the realme  
is voyde / for as I haue herde the maxy-  
mes of the lawe be of as great strength in  
the lawe as statutes. And some thynketh  
that in this case the infaunte is bounde to no  
more / but onely to repay the money to hym  
that he solde his lande vnto / With suche re-

sonable cost; and charges as he hath sustayned by reason of the same. but yf a man sell his lande by a suffycient and lawfull contracte though he there lacketh lyuerie of season or suche other solempnyties of the lawe yet the seller is bounde in conscience to performe the contracte / but in this case the contracte is insuffycient / and so me thynketh great dyuersytie byt wythe the cases.

**(Student)** For this tyme I holde me contentyd with thy oppynyon.

**The seconde questyon of the student. The. xxii. chapytre.**

**S**tudent) Yf a man that hath landes for terme of lyfe be impanellid vpon an inquest / & therupō lesyth yssues and dyeth / whether may tho yssues be leuyed vpon hym in the reuercyon in conscience / as they may be by the lawe. **(Doctoure)** Yf they may be leuyed by the lawe / What is the cause why thou doest doute whether they may be leuyed by conscience. **(Student)** for there is a maxime in the lawes of Englande / that where two tytles runne toggyther / the eldest tytles shal be preserryd.

The. xlii.

And in this case the title of hym in the reuercyon is byfore the title of the forfetour of the yssues. And therefore I doute somwhat whether they maye be lawfully leuyed. ¶ Doctour) By y<sup>e</sup> reason it seemyth thou arte in doute what the lawe is in this case / but that must necessarily be knowen / for els it were in vayne to argue what conscience wyll therein. ¶ Student) it is certayne that the lawe is suche / & so it is lyke wyse yf the husbonde forfet yssues & dye / tho yssues shalbe leuyed on the landes of the wyfe. ¶ Doctour) And yf the lawe be suche it seemyth that conscience is so in lyke wyse / for syth it is the lawe that for expecacyon of Justice every mā shal be ipanellyd when ned requyrieth it semyth resonable: that yf he wyll not appere that he shuld haue some punishment for his not apperaunce: for els the law shuld be clerly frustrat in y<sup>e</sup> poynte And that payne as I haue herde is that he shall lese yssues to the kyng for his not apperaunce / wherfore it seemyth not inconuenient nor agaynst conscience though the law be that tho yssues shall be leuyed of hym in the reuercyon / for that cōdycon was secretlye vnderstande in the lawe to passe with

the lease When the lease Was made. And  
therfore it is for the lessoure to be ware and  
to preuent that daunger at the makynge of  
the lease / or els it shall be aiuged his owne  
defaute: And then this pertyculer maxymme  
Wherby suche yssues shall be leuyed vpon  
hym in the reuercyon is a pertyculer excep-  
cyon in the law of Englande from that ge-  
nerall maxymme that thou haste remembred  
byfore / that is to say that Where two tytles  
tonne togyther / that the eldest tytle shall be  
preferryd / and so in this case that generall  
maxymme in this poynte shall holde no pla-  
ce nother in lawe nor in consence / for by  
this pertyculer maxymme the strength of that  
generall maxymme is restrayned to euery in-  
tent / that is to saye as well in lawe as in  
consence.

**T**he thyrde questyon of the student.

The. xxiii. chapytre.

**S**tudent. Yf a ternaunt for terme of  
lyfe / or for terme of yeres do waste  
Wherby they be bounde by the law  
to yelde to hym i the reuercyon treble dama-  
ges. And shall also forfet the place wasted /

The. xviii.

Whether is he also bounde in conscience to pay the damages & to restore the place wasted immediatly after the waste done / as he is the single damages / or that he is not bounde thereto tyll the treble damages and the place wasted be recoveryd in the kynges courtte. ¶ Doctoure) byfore Judgement gyven of the treble damages and of the place wasted he is not bounde in conscience to pay them. For it is Uncertayne what he shulde pay / but it suffyseth that he be redye tyl Judgement be gyven to yelde damages accordynge to the Value of the waste / but after the Judgement gyven / he is bounden in conscience to yelde the treble damages / and also the place wasted. And the same lawe is in all statutes penall / that is to saye that no man is bounde in conscience to pay the penaltie tyll it be recoveryd by the lawe.

¶ Student) Whether maye he that hath offendyd agaynst suche a statute penal defende the accyon and hyndre the Judgement to the intent he wolde not paye the penaltie / but only the single damages. ¶ Doctoure) yf the accyon be taken ryght wyselye accordynge to the statute / & Upon a Juste cause the defendaunt may in no wyse defende the

accyon / onles he haue a trewe dylatory ma-  
ter to plede: Whiche shuld be hurtful to hym  
yf he pledyd it not / though he be not boude  
to pay the penaitye tyll it be recoueryd.

**T**he fourth questyon of the stu-  
dent. The. xxviii. chapytre.



**S**tudent) If a man infeffe  
another in certayne Lande  
vpon condycyon that yf he  
infeffe any other: that it shal  
be la w full for the seffour &  
his heyres to reentre. &c. Whether is this con-  
dycyon good in cōscyence though it be voy-  
de in the la we. **(Doctour)** What is the cau-  
se why this cōdycyon is voyde in the la we.  
**(Student)** The cause is this / by the la we  
it is incydent to euery state of fee symple /  
that he that hath that estate may la w fully  
by the la we and by the gyfte of the seffoure  
make a seffement therof. And then when  
the seffoure restrayneth hym after that he  
shall make no seffemēt to no man agaynst  
his owne former graunt / and also agaynst  
the purtye of the state of a fee symple / the  
la we Iudgeth the condycyon to be voyde /

Dyaloge.

O. i.

but yf the condycyon had ben that he shuld  
 not haue infeffed suche a man / or suche a  
 man that condycyon hadde ben good / for  
 yet he myghte infeffe other. ¶ (Doctoure)  
 though the sayde condycyon be agaynst the  
 effecte of the state of a fee symple / and also  
 agaynst the la<sup>de</sup>. Nevertheless it is not a  
 gaynst the intent that the partyes agreed a  
 pon / & that at the tyme of the lyuerey. And  
 for as moche as the intent of the ptyes was  
 that yf the feffe infeffed any man of the la<sup>de</sup>  
 de / that then the feffoure shuld entre / and to  
 that intent the feffe toke the estate and af  
 ter breke the intent it semyth that the lande  
 in consyence shulde retorne to the feffoure.  
 ¶ (Student) the intent of the partyes in the  
 la<sup>des</sup> of Englande is voyde in many ca  
 ses / that is to say yf it be not orderyd accor  
 dyng to the la<sup>de</sup>. As yf a man of his mere  
 mocion without any recompence intendyn  
 ge to gyue landes to another and to his hey  
 res make a dede vnto hym / wherby he gy  
 ueth hym the landes to haue and to holde to  
 hym for euer intendynge that by that wor  
 de (for euer) the feffe shulde haue the lande  
 to hym and to his heyres / in this case his in  
 tent is voyde / and the oier shall haue the

lande only for terme of lyfe. Also yf a man  
gyue lādes to another and to his heyres for  
terme of .xx. yeres intendyng that yf the les  
see dye Within the terme / that then his heyres  
shulde enioye the lande durynge the terme.  
In this case his intent is voyde / for by the  
lawe of the realme all chattellys real & per  
sonall shal go to the executoures / and not  
to the heyre. Also yf a man gyue landes to  
a man and to his wyfe / & to the thyrde per  
sone intendynge that euery of them shulde  
take the thyrde parte of the lande as thre cō  
mon persons shuld his intent is voyde / for  
the husbonde & the wyfe as one persone in  
the lawe shal take onlye the one halfe and  
the thyrde persone the other halfe / but these  
cases be alway to be vnderstaunde where the  
sayd estates be made without any recom  
pence. And for as moche as in this pryncy  
pall case / the intent of the feffour is groun  
dyd agaynst the lawe: & that there is no re  
compence appoyntyd for the feffement: me  
thynketh y<sup>t</sup> the feffour hath neyther ryght  
to the lande by lawe nor consyence / for yf  
he shuld haue it by consyence / that cōscyen  
ce shuld be groundyd vpon the lawe of rea  
son & that it can not / for condycyons be not

The. xviii.

groudyd vpon the lawe of reason / but vpon  
the maxymes & custome of the realme. And  
therfore it myghte be ordaynyd by statute /  
that all cōdycones made vpon lande shulde  
be voyde. And when a cōdycon is voyde  
by the maxymes of the lawe / it is as fully  
voyde to euery intent as yf it were made  
voyde by statute / & so me thynketh that in  
this case the feffour hath no ryght to the la-  
de i lawe nor in consyence. ¶ (Doctour) I  
am cōtent thy oppynyon stāde tyll we shal  
haue hereafter a better leasure to speke fer-  
ther in this mater.

The. V. questyon of the student.

The. pp V. chapytre.



¶ (Student) yf a fyne with  
proclamacyon be leuyd  
ed accordynge to the sta-  
tute and no clayme ma-  
de within. V. yerres. &c.  
Whether is the ryght of  
a straunger extyncted  
therby in consyence / as it is in the lawe.  
¶ (Doctoure) vpon what consyderacyon  
was that statute made. ¶ (Student) that

the right of landes and tenementes / myght  
 be the more certaynly knowen and not to  
 be so Vncertayne as they were byfore that  
 statute. (Doctoure) and When any lawe  
 of man is made for a comon welth / or for a  
 good peace and quyetnes of the people / or  
 for any inconuenience or hurte to be sau'd  
 from them / that lawe is good though the per-  
 case it extynct the ryght of a straunger and  
 muste be kept in the courte of consyence for  
 as it is sayd byfore in the.iii.chapitre / By  
 lawes ryght wysely made by mā : it appe-  
 ryth who hath ryght to landes and goodes:  
 for what soeuer a man hath by suche a lawe  
 he hath it ryght wysely. And what soeuer  
 he holdeth agaynst suche a lawe he holdyth  
 Vnryght wysely. And ferthermore as it is  
 sayde there all lawes made by man / whiche  
 be not contrarie to the lawe of god must  
 be obseruyd & kepte / and that in consyence.  
 And he that dyspysseth them dyspysseth god:  
 and he that resystyth them resystyth god /  
 also it is to be vnderstande that possessy-  
 ons and the ryght therof be subiecte to the  
 lawes / so that they therfore with a cause re-  
 sonable maye be translated & alteryd from  
 one man to another by the acte of the lawe.

The. pp. B.

And of this cōsideracion that law is grow  
dyd that by a contracte made in feyres and  
markettes the proprietye is alteryd excepte  
the proprietye be to the kynge / so that the byer  
paye tolle / or do suche other thynges as is a  
customyd there to be done vpon suche con-  
tractes / and that the byer knoweth not the  
former proprietye. And in the lawe Lytle  
there is a lyke lawe that yf a man haue ano-  
ther mānes good with a tytyle thre yere thyn  
kynge yf he hath ryght to it / he hath the very  
ryght vnto the thyng: and that was made  
for a lawe to the intent that the proprietye &  
ryght of thynges shuld not be vncertayne /  
and that varyaunce and stryfe shulde not  
be amonge the people. And for as moche as  
the sayd statute was ordayned to gyue a cer-  
teyntye of tytyle in the landes & tenementes  
comprysyd in the fyne / It semyth that that  
fyne extynctyth the tytyle of all other / as  
well in consyence as it dothe in the lawe.  
And sythe I haue answered to thy questy-  
on I praye the let me knowe thy mynde in  
one questyon concernynge Tayled landes  
and then I wyll trouble the noo ferther at  
this tyme. . . . .

**A** questyon made by the Doctoure / how  
certayne recoueryes that be vsyd in the  
Iz ynges courtes to defete Tayled  
lāde may stande With cōscyence.

The. xv. lvi. chapytre.



Doctoure) I haue herde say  
that when a man that is  
seasyd of landes in the tay  
le sellyth the lande. That  
it is cōmonly vsyd that he  
that byeth the lande shall  
for his suertye / and for the auoydyng of the  
tayle in that byhalfe / cause some of his fren  
des to recouer the sayde landes agaynst the  
sayd tenaunte in tayle: Whiche recouerye as  
I haue ben credably enformyd shal be had  
in this maner / the demaundauntes shall  
suppose in theyr Wytte and declaracyon /  
that the tenaunt hath no entre / but by suche  
a straunger as the byer shall fynde to name  
and appoynte / where in dede the demaun  
daunt neuer had possessyon therof / nor yet  
the sayd straunger. And therupon the sayde  
tenaunte in tayle shall appere in the courtes  
and by couyn and by assent of the partyes /  
shall vouche to Warraunte one that he know

Weth Well hath no thyng to yelde in Value  
 And that Vouchee shall appere and the de/  
 maundauntes shall declare agaynst hym /  
 & therupon he shall take a day to enperle in  
 the same terme: & at that day by assent & coi/  
 nyng of the partyes / he shall make defaulte  
 Upon which defaulte bycause it is a defaulte  
 in despyte of the courte / the demaundauntes  
 shall haue Iugemēt to recouet agaynst the  
 remaunde in tayle / and he ouer in Value a/  
 gaynst the Vouchee and this Iugemēt and  
 recouerye in Value / is taken for a barre of  
 the tayle for euer / how may it therefore be ta/  
 ken that that la we standeth With conscyence  
 that as it seemyth also Weth and fauouryth  
 suche fayned recoueryes. ¶ Student) yf the  
 tenant in tayle sell the lāde for a certayne  
 sūme of money as is agreed byt wyth them  
 at such a pryce as is comonly Used of other  
 lādes / & for the suertye of the sale sufferyth  
 suche a recouerye as is aforesayd / What is  
 the cause that mouyth the to doubt whether  
 the sayd cōtracte or the recouerye made theru/  
 pon: for the suertye of the byer that hath true/  
 ly payde his money for the same shuld stan/  
 de With cōscyence. ¶ Doctoure) I Wothyn/  
 ges cause me to doute therein / one is for that

that after our Lorde had gyuen the lande of  
 byphete to Abraham and to his seds / that is  
 to say to his chyldren in possessyon al waye  
 to contynue / he sayde to Moyses as it appe-  
 ryth scutic. xxv. the lande shall not be sold  
 for euer / for it is myne. And then our lor-  
 de assygnd a certayne maner howe the las-  
 de myght be redemyd in the yere of Jubylie  
 yf it were solde byfore: & for as moch as our  
 Lorde wold y<sup>t</sup> the lade so gyue to Abrahā  
 & his chyldren shuld not be solde for euer / it  
 semyth that he doth agaynst the ensaple of  
 god y<sup>t</sup> al penyth or sellyth the lande y<sup>t</sup> is gy-  
 uen to hym & to his chyldren as lād<sup>s</sup> Intay-  
 led be gyuen. Another cause is this: it appe-  
 ryth by the cōmaundemēt of god that thou  
 shalt not coueyte the howse of thy neygh-  
 bore. &c. And yf the cōcupiscence be phyby-  
 ted more stronger the vnlawfull takynge  
 & Withholdyng therof is prohybyt / and for  
 as moche as tyled lande whan the aunces-  
 stre is deed is a thyng that of ryght is belō-  
 gynge to his heyre / for that he is heyre accor-  
 dyng to the gyfte / howe maye that lande  
 with ryght or cōscyēce be holden from hym.  
 ¶ Student) not Withstandyng that prohy-  
 bycyon of almyghty god: Wherby the lande

The .xxvi.

that Was gyuen to Abraham & to his seed  
myghte not be alpyened for euer / yet landes  
Within Wallys to Wines myght la w full ye  
be alpyened for euer / except the landes of the  
leuytes as it apperyth in the sayd L happytre  
of leuitic. .xxv. And so it apperyth that the  
sayd p hybycyon Was not generall for euer  
ry place: and that amonge the Jewes. And  
it apperyth also that it Was gyuen only for  
Abraham and his chyl dren / and so it Was  
not generall to all people. And it apperyth  
also that it extensyd not but only to the lan  
de of p myssyon / as it apperyth by the wor  
des of the sayd L happytre / Where it is sayde  
thus all the Regyon of your possession shal  
be solde vnder the cōdycon of redemyngge /  
Wherby apperyth that landes in other coun  
tres be not bounde to that condycion / & as  
they be not bounde to that cōdycon: by the  
same reason / it foloweth that they be not  
boude to the same successyon. Therefore the  
sayde lawe that Wyl that the lande gyuen  
to Abraham and to his seed shall not be sol  
de for euer / byndeth no lande out of the lan  
de of promysyon / and some men Wyl say  
that sythen the passyon of oure Lorde Was  
promulgate & knowen it byndeth not there.

And to thy seconde reason Whiche is groun  
 dyd vpon the comaūdemēt of god: It must  
 nedes be graunted that it is not lawfull to  
 any man vnlawfully to couete the howse  
 of his neyghbour / & that then more stronger  
 he may not vnlawfully take it from hym:  
 but then it remayneth for the yet to proue /  
 howe in this case this tyled lande that is  
 solde by his auncestre / and wherof a recoue  
 ry is had of recorde in the kynge's courtte may  
 be sayd the lande of the heyres. (Doctour)  
 that may be prouyd by the lawe of the real  
 me / that is to say by the statute of Westme  
 ster the seconde the fyrste chappytre / Where it  
 is sayd thus. The wyll of the gyuer expres  
 sely contayned in the dede of his gyfte shal  
 be from hensforth obseruyd / so that they to  
 whom the tenement's be so gyuen shal not  
 haue power to alpen / but yf the lādes after  
 theyr deth shal remayne to theyr yssue or re  
 tourne to the donoure yf the yssue fayle / by  
 the Whiche statute it appertyth euidently that  
 though they to whom the tenementes were  
 so gyuen alpened them a waye / that yet ne  
 uerthelesse they in lawe and consyence by  
 reason of the sayd statute ought to remayn  
 to the heyres accordyng to the gyfte / for it is

holden commonly by all Doctoures that the  
 comaundement and reules of the lawe of  
 man or of a posytyue lawe that is lawfully  
 made / bynde al that be subgiertes to that  
 lawe accordyng to the mynde of the maker  
 and that in the courte of cōscience. ¶ (Stu-  
 dent) doest thou thynke that yf a man offen-  
 de agaynst a statute penall that he offend-  
 dyth in conscience admyt that he do it not  
 of a wylfull dysobedience for that he wylle  
 not obey the lawe / for yf he do it of dysobe-  
 dyence I thynke he offendyth. ¶ (Doctour)  
 Yf it be but only a statute that is called Po-  
 pular it byndyth not in cōscience to the pay-  
 ment of the penaltie / yll it be recoueryd  
 by the lawe. And than it doth bynde in con-  
 science / but yf a statute be made pryncypal-  
 ly to remedy the hurte of the partye / and for  
 that hurte it gyueth a penaltie to the partye  
 in that case the offendo<sup>r</sup> of the statute is bou-  
 de iūdedyatlly to restore the damages to the  
 Value of the hurte as it is vpon the statute  
 of Waste / but the penaltie aboue the hurte  
 he is not bounde to paye tyll Iugement be  
 gyuen as it is sayde byfore / but statutes by  
 the whiche it is assygned who shall haue  
 ryght or proprietye to these landes and tenes

ment / or to these goodes or catalles yf it be  
 not agaynst the lawe of god / nor agaynst  
 the lawe of reason bynde all theym that be  
 subgett to the lawe: in lawe and cōscyence /  
 & suche a statute is the statut of Westmester  
 the. ii. wherof we haue treatyd byfore / wher  
 fore it must be obseruyd i cōscyence. ¶ **Stu-**  
**dent** but some holde that the sayd statute of  
 Westm the. ii. Was made of a synngularitie &  
 psumpcyon of many that were at the sayd  
 Parliament for exaltynge & magnysfyeng  
 of theyr owne blode: & therfore they say that  
 that statute made by suche a psumpcyon  
 byndyth not in cōscyence. ¶ **Doctour** It is  
 very peryllous to Iuge for certayne that  
 the sayd statute Was made of suche a psum  
 pcyon as thou spekest of / for there be many  
 consyderacyons to proue that the sayde sta  
 tute Was not made of suche a psumpcyon  
 but rather of a very good mynde of all the  
 Parlyament / or at the leste of the more par  
 te therof / and for the cōmon welth of al the  
 realme / and fyrste in the kynge the whiche  
 in the sayd Parlyament Was the hede and  
 moste chiefe & pryncypall parte of the Par  
 lyament as he is in every Parlyament / can  
 not be noted no suche intent / For it is not

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necessary nor it was not then i Use that lā:  
des of the crowne shulde be entayled: and  
in spirytuall men ne yet in certayne burge  
syes and cytyzens of the sayd Parlyament  
which at that tyme had no lande: there can  
be noted no suche syngularyte / nor yet in  
the noble men & gentylmen nor suche other  
as were of the sayde Parlyament and had  
landes and tenementes / It is not good to  
Juge in certayne that they dyd it of suche a  
presumpcion / but it is good and expedyent  
in this case as it is in other cases that be in  
doubte to holde the surer waye / and that is  
that it was made of charytie / to the intent  
that he nor the heyres of hym to whom the  
lande was gyven shuld not fall in to extre  
me pouertye / and therby haplye to comen in  
to offence agaynst god / and though it were  
trewe as they saye that it was not made of  
charytie but of presumption & syngularyte  
as they speke of. Nevertheless for as moche  
as the statute is not agaynst the law of god  
nor agaynst the lawe of reason it muste be  
obseruyd by all them that be subgettes vnto  
that lawe / For as John Gerson sayth  
in the treatyse that he entytuleth in latyn  
De Vita spiritali aie: the fourth lesson &

the thyrde corollarye: sayth that god wyll  
that makers of lawes iuge only of outward  
de thynges & reserve secrete thynges to hym.  
And so it appereth that man may not iuge  
of the inward intent of the deed, but of such  
thyng; as be apparaunte / and certayne it  
is that it is not apparaunte that there was  
any suche corrupt entente in the makers of  
the sayde statute / howe maye it therfore be  
sayd that that lawe is good or ryght wyse /  
that not only suffreth such thyng; agaynst  
the statute / but also agaynst the comaunde  
ment of god. ¶ Student) To that some an  
swered and say: that when the lande is solde  
& a recovery is had therupon in the kynges  
courte of recorde that it suffiseth to barre the  
tayle in consyence / for they saye that as the  
tayle was fyrste ordayned by the law. So  
they saye that by the lawe it is adnulled a  
gayne. ¶ Doctoure) be thou thy selfe Juge  
ys in y<sup>t</sup> case there be lyke auctorytie i the ma  
kyng of the taylor as there is in the adnulle  
lyng therof / for it was ordayned by aucto  
rytie of Parlyament / the whiche is alway  
taken for the most hyghe courte in this real  
me byfore any other / and it is annulled by a  
false supposell: for that that they that be na

medemaũdault; shuld haue ryght to the la  
 de Where in trouth they neuer had ryghtther  
 to: Wherupō solo Weth a false supposel i the  
 Wryt / & a false supposell in the declaracyon  
 & a Voucher to Warrante by couyn of such a  
 persone as hath no thynge to yelde in Value  
 & therupon by couyn and collucyon of the  
 ptyes solo Weth the default of the Vouchee:  
 by the Whiche defaulte the Iugement shall  
 be gyuen / And so all that Iugemēt is dety  
 uyd & groundyd of the Vntrue supposel & co  
 uyn of the partyes / Wherby the la We of the  
 realme that hath ordayned suche a Wryt of  
 entre to helpe them that haue ryght to lādes  
 or tenēt is defraudyd: the courte is desceyuyd  
 the heyre is disherited: & as it is to doubte the  
 byer & the seller and theyr heyres & assygnes  
 hauyng knowlege of the tayle be bounde  
 to restytucyon / and Verelye I haue harde  
 many tymes / that after the la We of the real  
 me suche recoveryes shuld be no bart to the  
 heyre in the tayle / yf the la We of the realme  
 myght be therein idifferently harde. ¶ Stus  
 dent) I can not se but that after the la We of  
 the realme it is a bart of the tayle / for When  
 the tenaunte in tayle hath Vouched to War  
 taunte / and the Vouchee hath apperyd &

entred in to the Warraūtye / & after hath made  
 be defaute in despyte of the courte: Wherupō  
 Jugement is gyuen for the demaundaunt  
 agaynst the tenaūt / & for the tenaūt that he  
 shal recouer in Value agaynst the Vouchee /  
 the heyre in the tayle shuld after brynge his  
 forme done and recouer the landes Intayl  
 led / and after the Vouchee purchaseth lands  
 des / than shuld the heyre also haue excecucyō  
 on agaynst hym to the Value of the landes  
 entayled as heyre to his auncestre that was  
 tenaunt in the fyrste accyon: and so he shuld  
 haue his owne landes / and also the landes  
 recoueryd in Value: and therfore bycause of  
 that psumpcyon that the Vouchee may pur  
 chase landes after the Jugemēt / some be of  
 oppynyō that it is in the lawe a good barre  
 of the tayle. (Doctoure) I suppose that in  
 that case that thou hast put that the Vouche  
 may barre the heyre in tayle of his recouerie  
 in Value bycause he hath recoueryd the fyrst  
 landes. Neuerthelesse I Wyll take a respy  
 te to be aduysed of that recouerye in Value.  
 And yf thou can yet shewe me any other cō  
 syderacyō Why the sayde recoueryes shuld  
 stande With conseqence / I praye the let me  
 here thy conceyte therin / for the multytude

The. pp. St.

of the sayd recoveries is so great that it w<sup>e</sup>re  
re great pytie that all they shu<sup>d</sup> be bounde  
to restytucion that haue landes by suche re-  
coveries syth there is none that as far as I  
can here dysposeth theym to restore. ¶ (Stu-  
dent) some men make an other reason to pro-  
ue that the sayd recoveries shu<sup>d</sup> be suffy-  
cient by the law to a voyde the state of West.  
then & yf they be suffy-ciēt thereto they be suf-  
fycient in conscyence. ¶ (Doctour) What is  
theyr reason therein. ¶ (Student) In the. vii.  
yete of kynge Henry the. viii. the. iiii. chapp-  
tre amonge other thynges it is enacted / that  
all recoverers theyr heires & assignes may  
aduowe and iustifie for rentes seruyce & cu-  
stomes by them recoveryd : as they agaynst  
Whome they recoveryd myght haue done:  
And then they saye that when the Parlyas-  
ment gaue to suche recoverers auctoritie to  
aduowe and iustifie for suche rentes custo-  
mes and seruyces as they recoveryd / that  
the entent of the parlyament was that such  
recoverers shulde haue ryght to that: for the  
Whiche they shu<sup>d</sup> aduowe or iustifie: for  
els they saye that it shu<sup>d</sup> be in Vayne to gy-  
ue them suche power / and that the Parlyas-  
ment shu<sup>d</sup> els be taken in maner as forty

fyers of Wrongfull tytles: and so they saye  
that suche recouersers by reason of the sayde  
statute haue ryght by the law. (Doctour)  
that statute as it semyth Was made only to  
gyue to the recouersers a forme to aduowde &  
iustifye / Whiche they had not byfore though  
they had recoueryd vpon a good tytle. And  
the cause why they had no forme to aduowde  
or iustifye byfore the sayde statute Was for  
as moche as the recouersers dyd not by the  
pretence of theyr accion afferme the possessi  
on of hym or them agaynste Whom they res  
coueryd / nor claymed not by them / But ra  
ther dysaffermyd and dystroyed theyr estate.  
And therefore they can not allege any conty  
nuance of theyr tytle by them / as they may  
that haue rentes or seruyces / or suche other  
of the graunte of other by dede or by fyne.  
And therefore as it semyth the most pryncy  
pall intent of that statute Was : that suche  
recouersers shuld aduowde & iustifye for rentes  
seruyces & customes as they shuld or myght  
do that had them by fyne or dede: not hauyng  
ge any respect as it semyth Whether they res  
coueryd agaynste tenaunte in fee symple or  
in fee taylor / nor Whether the recoueries We  
re had vpon a ryghtful tytle. And therefore

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as me semyth the sayd estatut neyther affe-  
myth nor dyssaffermyth the tytle of the re-  
couerpes wherby they do aduowde for yf a-  
ny man had ryght byfore the recouerye that  
ryght shulde remayne vnto hym not with-  
standynge the sayd statute: & so me semyth  
that the tytle of them that haue the landes  
entayld by suche recouerpes is no thyng  
fortyfied nor affermid by the sayd estatute  
but y<sup>e</sup> they are in the same case as they were  
byfore: What thynkest thou therein. ¶ Stu-  
dent) this mater is great / for as thou sayste  
there be so many that haue tyled lādes by  
suche recouerpes / that it were great pytie &  
heuyenes to condempne so many persones &  
to Iuge that they all were bounde to resty-  
tucion: For I thynke there be but fewe in  
this realme that haue landes of any notable  
value: but that they or theyr auncestours /  
or som other by whom they claym haue had  
parte therof by suche recouerpes / In so mo-  
che that lordes spyrytuall and temporall /  
knyghtes / squyres ryche men / & poore / Ho-  
nasteryes / Collegyes / and hospytallys haue  
suche landes / for suche recouerpes haue ben  
used of longe tyme / who may thynke ther-  
fore withoute great heuyenes that so many

men shuld be bounde to restytucyon / & that yet as thou sayst / no man disposeth hym to make restytucyon. And so I am in maner perplexed and wot not what to say in this case / but that yet I truste that ygnoraunce may excuse many persones in this behalfe. ¶ **Doctour** ygnoraunce of the dede may excuse / but ygnoraunce of the lawe excusyth not but it be inuincible / that is to say that they haue done that in them is to knowe the trouthe as to counsell With lernyd men: and to aske them what the lawe is i that behalfe and yf they answer them that they may do this or that lawfully / then they be thereby excused in conscience / but yet i mānes lawe they be not thereby dyscharged / but they that haue taken vpon them to haue knowleg of the lawe be not excused by ygnoraunce of the lawe / ne no more are they that haue a wylfull ygnoraunce and that wold rather be ygnorant then to knowe the trouthe. And therefore they wyl not dyspose theym to aske any counceyll in it / and yf it be of a thyng that is agaynst the lawe of god / or the lawe of reason / no man shal be excused by ygnoraunce / and so there be but fewe that be excused by ygnoraunce. ¶ **Student** What

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Then shall we condempne so many & so notable men. (Doctoure) We shal not condempne them / but we shall shewe them theyr peccysse. (Student) Yet I trust that theyr danger is not so great that they shuld be bounde to restytucyon. For John Gerson sayth in the sayd booke called De Unitate ecclesiastica consideratiōe secunda / qd cōis error facit uis. That is to say a comen errour may kyth a ryght / of whiche word; as it semyth some trust may be had / that though it were fully admyttyd that the sayde recouetyes were first had vpon an vnlawful ground and agaynst the good ordre of cōscience that yet neuertheles for as moche as they haue ben vsed of longe tyme / so that they haue ben taken of dyuers men that haue ben ryght well lernyd in maner as for a lawe / that the byers partly be excusyd so that they be not bounde to restitution. And moreover it is certayn that that statut of Westm the. ii. nor none other statute made by mā can not be of greater vertue or strength / than was the bonde of matrymonye that was ordayned by god / And though that bonde of matrymonye was indyssoluble / yet neuertheles Moyses suffred a byll of refusell to the

Jues / Which in latyn is called Libellum re-  
 pudii / & so they myght therby forsake theyr  
 Wyfes As it appereth deuteron. xxiii. ai. &  
 therefore lyke as a dyspensacion Was su-  
 fferd agaynst that bonde / so it semeth it may  
 be agaynst this statute. ¶ Doctoure as to  
 that reason that thou hast last made of a byll  
 of refusell / let all purchasours of lande here  
 what our Lorde sayth i the Gospell to the  
 Jues of that byll of refusell Math. xix.  
 Where he saythe thus / To the hardnes of  
 your hertes / Moyses suffred you to leue your  
 Wyfes / for at the begynnyng it was not so /  
 of whiche wordes Doctours holde comon-  
 lye that though suche a byll of refusell was  
 lawfull so that they that refused theyr wy-  
 fes therby / shulde be without payne in the  
 lawe / that yet it was neuer lawfull so that  
 it shuld be without synne. And so lyk wyse  
 it may be sayde in this case / that suche reco-  
 uerres be suffred for the hardnes of the her-  
 tes of Englysshemen / whiche desyre lande  
 & possessyons with so great gredynes that  
 they can not be withdraue from it ney-  
 ther by the lawe of god / nor by the lawe of  
 the realme. And therefore y<sup>e</sup> ryche men shuld  
 not take the possessyons of poore men from

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them by power Without colour of tytle /  
that is to say eyther by open dysseison / or by  
the onely sale of the tenaunt in tayle and so  
to hold theym agaynst the expresse Wordes  
of the statute / suche recoueries haue ben suf-  
fred. And though for theyr great multytude  
they maye haplye be Without payne as to  
the lawe of the Realme: yet it is to feare that  
they be not Without offence as agaynst god /  
and as to thy other reason that a comon er-  
rour shulde make a ryght those Wordes as  
me semyth be to be thus Vnderstande / that  
a custome Vsed agaynst the lawe of man  
shal be taken in some countres for lawe yf  
the people be suffred so to contynue / And  
yet some men call such a custome an errour  
Bycause that the cōtynuaunce of that custom  
agaynst the lawe: Was partlye an errour in  
the people / for that that they wold not obey  
to the lawe that was made by theyr supe-  
ryours to the contrarye of that custome: But  
it is to be Vnderstande that the sayd recou-  
eries though they haue ben longe Vsed may  
not be taken to haue the strength of a custo-  
me / for many as well lernyd as vnlernyd  
haue alwayes spoken agaynst theym and  
yet do. And furthermore as I haue herde

say a custome or a prescripcyon in this realme agaynst the statutes of the realme preuayle not in the lawe. ¶ (Student) though a custome in this Realme preuayleth not agaynst a statut as to the lawe / yet it semyth that it may preuayle agaynst the statute in conscience / for though ygnorance of a statute excusyth not in the lawe / neuertheles it may excuse in conscience / and so it semyth that it may do of a custome. ¶ (Doctoure) But yf suche recoueryes can not be brought in to a lawfull custome in the lawe / it semyth they may not be brought i to a custom in conscience / for conscience must alway be groundyd vpon some lawe: and in this case it can not be groundyd vpon the lawe of reason / nor vpon the lawe of god: and therefore yf the lawe of man setue not / there is no grounde wherupon conscience in this case may be groundyd / & at the begynnyng of suche recoueryes they were taken to be good / bycause the lawe shuld warraunte them to be good and not by reason of any custome / and so yf the reason of the lawe wyll not setue in tho recoueryes / the custome can not helpe for an euill custome is to be put away. And therefore me semyth that tho re-

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couertyes be not withoute offence agaynst  
god / though haplye for theyr great multy-  
tude / and that there shuld not be as it were  
a subuersyon of the inherytaunce of many  
in this realme: as well of spyrytuall as tem-  
porall / they be without payne i the law of  
the realme: except such recoueries as by the  
comon course of the law / be voydable i the  
law by reason of some vse / or of som other  
specyall mater / but what payne that is I  
wyl not temerously Iuge / but comyt it to  
the goodnes of our Lorde whose Iugemēt  
be very depe & profounde / nor I wyl not  
fully afferme y<sup>t</sup> they y<sup>t</sup> haue lādes by suche  
recoueries ought to be cōpellēd to restytucy-  
on / but this semyth to me to be good cōuicell  
that eueri man herafter holde that is certay-  
ne and leue that is vncertayne: and that is  
that he kepe hym self from suche recoueries  
and then he shal be fre from all scrupulous-  
nes of consyence / in that behalfe. ¶ (Stu-  
dent) It semyth that in this questyon thou  
pōderyst greatly the sayd statute of Westm  
the. ii. and that though it be but onely a law  
made by man / that yet for as moche as it is  
not agaynst the law of reason / nor the law  
of god / thou thynkest that it must be hol

ben in consyence / & ouer that as it semyth  
 thou arte som what in doubt whether those  
 recoueryes be any bar to the heyre i the tay-  
 le by the law of the realme onles that he ha-  
 ue in Value in dede vpon the Voucher / and  
 that thou wylte therupon take a respyte or  
 thou shewe thy full mynde therin / & in lyke  
 wyse thou thynkest as I take it that those  
 recoueryes can not be brought i to a custom  
 but that the longer that they be suffred to  
 cōtinue yf they be not good by the lawe the  
 greater is the offence agaynst god / And ther-  
 fore thou ponderyst lytle that custome / But  
 yet thou agreeest that it is good to spare the  
 multytude of them that be paste: lest a sub-  
 uercion of the inherytaunce of many of this  
 realme myght folow and great stryfe and  
 Varyaunce also: yf they shulde be adnulled  
 for the tyme past: except ther be any other es-  
 pecyall cause to auoyde them by the law as  
 thou hast touchyd i thy last reason / but thou  
 thynkyst that it were good that from hens-  
 forth suche recoueryes shuld be clerely pro-  
 hybyt and not be suffred to be had i vse as  
 they haue ben byfore: and thou counceyllest  
 all men therfore to refrayne them self from  
 suche recoueryes herafter. ¶ Doctour thou

The. pp Vii.

takest Well that I haue sayd & accordynge  
as I haue mente it. ¶ Student) nowe I  
pray the syth I haue harde thy questyon of  
these recoueryes accordynge to thy desyre yf  
thou woldest answer me to some pertyn-  
ler questyons concernynge tyled landes:  
Wherof thou hast at this tyme gyuen vs oc-  
casyon to speke. ¶ Doctour) shewe me tho-  
se questyons: & I Wyl shewe the my mynde  
therin With good Wyl.

¶ The fyrst questyon of the student  
concernynge tyled landes.

The. pp Vii. chapytre.



Student) If a dyssejour  
make a gyft in the tyle  
to John at style & John  
at style for the redemp-  
tyon of the tyle of the dys-  
sejour agreyth With hym  
that he shall haue a cer-  
tayne rente out of the same lande to hym &  
to his heyres / and for the suertye of that rent  
it is dyuyded that the dyssejour shall release  
his ryght in the lande. &c. and that suche a re-  
couery as we haue spoken of byfore shalbe

had agaynst the sayde Johñ at style to the  
 Use of the payment of the sayd rent and of  
 the former tayle Whether standyth that reco  
 uery Well With consyence or not as thou  
 thynkest. ¶ (Doctour) I suppose it doth for  
 it is made for the strength and suertye of the  
 tayle Whiche the dyssesye myght haue clere  
 ly defeatyd and auoydyd yf he wolde / and  
 therfore as I thynke yf the sayde Johñ at  
 style had grauntyd to the dyssesye only by  
 his dede a certayne rent for the releasynge  
 of his tytyle that graunt shuld haue bounde  
 the heyres in the tayle for euer. And then yf  
 the dyssesye for his more suertye wyl haue  
 suche a recouerye as byfore apperyth it se  
 myth that that recouerye stādeyth With good  
 consyence. ¶ (Student) It semyth that thy  
 oppynyon is ryght good i this mater. And  
 so it apperyth that With a reasonable cause  
 some partyculer recoueryes may stāde both  
 With lawe & cōsyence to barre a tayle.

¶ The seconde questyon of the stu  
 dent concernynge tailed landes.

The. lxxviii. chapytre.

Dyaloge.

r.iii.

The. xxv Blit.



**S**tudent) If tenaunt in tay  
le suffre a recovery agaynst  
hym of the landes entayled  
to the entent that the recou-  
ers shall stande seased ther  
of to the Use of a certayne Woman Whom  
he entendyth to take to his Wyfe / for terme  
of her lyfe / and after to the Use of the fyrste  
tayle: & after he maryeth the same Woman /  
Whether standyth that recovery With cōscy-  
ence though other recoveryes Upon bargay-  
nes and sales dyd not. (Doctoure) It ses-  
myth yes / for though the statut be / that they  
to Whom the tenementes be so gyuen shuld  
not haue power to alyen / but that the lādes  
after theyr deth shuld remayne to theyr yssu-  
es or reuert to the donours yf the yssues fay-  
led: yet yf he to Whom the lādes were so gy-  
uen take a Wyfe and dyeth seased Without  
heyr of his body / and the donour entre the  
Woman shall recouer agaynst hym the thyr-  
de parte to holde in the name of her dowre  
for terme of her lyfe though the tayle be de-  
termyned / & the same laſe is of tenaūte by  
the curtesy: that is to say of hym that happy-  
nyth to marye one that is an enherytrix of  
the landes entayled: and they haue yssue the

Wyfe dyeth and the yssue dyeth / he shall holde the landes for terme of his lyfe as tenaunt by the curtesye / not withstandynge the wordes of the statute which saye that after the deth of the tenaunt in taylor without yssue the landes shall reuert to the donour / & I thynke the cause is bycause the intent of that statute shall not be taken that it intended to put a waye suche tytles as the lawe shulde gyue by reason of the taylor / and so it semyth that a lyke entent of the statute shall be taken for ioyntoures / for els the statute myght be somtyme a lettynge of matrimony / and it is not lyke that the statute intended soo / and therfore it semyth that by the onely deed of the tenaunt in taylor a ioyntour maye be made by the intent of the statute / though the wordes of the statute serue not expressely for it / for many tymes the intent of the letter shall be taken and not the bare letter / as it appereth in the same statute where it is sayd that he to whom the landes be gyven shall haue no power to alyen / yet the same statut is construed that neyther he nor his heires of his body shall haue no power to alyen / and so me thynketh that suche an intent shall be taken here for sayyng of ioynt

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tours. ¶ Student) trouth it is that somtyme  
me the intent of a statute shall be taken fer  
ther than the expresse letter stretchyth / but  
yet there maye no entent be taken agaynst  
the expresse Wordes of the statute / for that  
shuld be rather an interpretacyon of the sta  
tute then an expositioun / and it can not be  
reasonably taken / but that the intent of the  
makers of the statut was y<sup>t</sup> the lāde shuld  
remayne cōtynually in the heyres of the tay  
le as lōge as the tayle enduryth / & there can  
no ioyntour be made neyther by dede nor by  
recoverye / but that the tayle must therby be  
dyscontynued / & therfore this case of Joynt  
toure is not lyke to the sayd cases of tenaūt  
in dower or tenaunt by the curtesye / for the  
tytle of dower and of tenauntcy by the cur  
tesye groweth moste speecially by the conty  
nuance of the possessyon in the heyres of the  
tayle / but it is not so of Joyntoures / & ther  
fore by the only dede of the tenaunte in tay  
le / there may no Joyntour be lawfully ma  
de agaynst the expresse Wordes of the statu  
te. And yf there be any made by waye of re  
coverye / then it semyth that it muste be put  
vnder the same rule as other recoveryes  
muste be of landes untayled.

**T**he thyrde questyon of the student/  
concernynge tyled landes.

The. pxxv. Chapytre.

**S**tudent) yf John at noke  
beyng seasyd of landes in fee  
of his mere mocyon make a  
seoffement of a certayne lan-  
des to the intent that the feof-  
ees shall therof make a gyfte to the sayde  
John at noke to haue to hym and to his hey-  
res of his body and they make the gyfte ac-  
cordinge. And after the sayd John at noke  
fallyth in to dette / wherfore he is taken and  
put in pryson / and therupon for paymēt of  
his dettes he sellyth the same lande / and for  
suerte of the byer he sufferyth a recouerye  
to be had agaynst hym in such maner as by  
fore apperyth / whether standeth that recoue-  
rye with consyence or not. (Doctoure) I  
wold here make a lytell dyggressyon to aske  
the another questyon or that I made an-  
swer to thynce: that is to say to fele thy myn-  
de howe that lawe by the whiche the body  
of the dettoure shall be taken and caste in to  
pryson there to remayne tyll he haue payde  
the dette may stande with consyence specy-

Dialogue.

s.i.

The. xxix.

ally yf he haue no thyng to paye it With/  
for as it semyth yf he Wylle relynquyssh his  
goodes / Whiche in some lawes is called in  
laten Cedere bonis that he shall not be in-  
prysoned / & that is to be vnderstande most  
specyally yf he be fallen in to pouertye and  
not through his owne defeaute. ¶ (Student)  
there is no lawe in this realme that the de-  
fendaunt may in any case Cedere bonis / &  
as me semyth yf there were suche a lawe it  
shuld not be indifferent / for as to the know-  
lege of hym that the money is owynge to  
the dettoure myght Cedere bonis / that is to  
say relynquyssh his goodes / and yet retay-  
ne to hym selfe secretly great ryches . And  
therfore that lawe in suche case semyth more  
indifferēt and ryghtouse that comytteth  
suche a dettour to the cōscience of the playn-  
tyfe to Whom the money is owynge then  
that comytteth hym to the cōscience of hym  
that is the dettoure / for in the dettoure some  
defaute maye be assignēd / but in hym to  
Whom the money is owynge maye be assy-  
gned no defeaute . ¶ (Doctoure) but yf he to  
Whom the dette is owynge / knoweth that  
the dettoure hath no thyng to paye the dette  
With / & that he is fallen in to that pouertye

By some casualtye. And not throughe his  
 owne defaute / doth the la We of Englande  
 holde that he may with good consyence ke  
 pe the dettoure styll in pryson tyll he be pay  
 de. ¶ Student) nay veryly: but it thynkeith  
 more resonable to appoynt the lybertie and  
 the Jugement of consyence in that case to  
 the dette then to the dettoure / for the cause by  
 fore rehersyd. And then the dette / yf he knos  
 we the trouthe is as thou haste sayd bounde  
 in cōscyēce to let hym go at lybertie though  
 he be not compellable therto by the la We.  
 And therfore admyttinge it for this tyme /  
 that the la We of Englande in this poynte  
 is good & iuste. I praye the that thou Wylte  
 make answer to my questyd. ¶ Doctour)  
 I Wylle with good Wyl / and therfore as me  
 semyth for as moche as it appereth that the  
 sayd gyfte was made of the mere lybertie &  
 fre Wylle of the sayd John at noke / & with  
 out any recompence / that therfore it can not  
 be other wyse taken / But that the intent of  
 the sayd John at noke as well at the tyme  
 of the sayde feoffment / as at the tyme that  
 he receyved agayne the sayd gyfte in the tay  
 le / Was that yf he happenyd after Wardes  
 to falle in to pouertie / that he myght alyen

the sayd lande to releue hym With / for how  
 maye it be thought that a man Wyll so mo-  
 che pondre the Welthe of his heyre / that he  
 Wyll forget hym self / and so it semyth that  
 not only the sayde recouerye standyth With  
 consyence: but also that yf he had made on-  
 ly a feoffemēt of the lande that that feoffe-  
 ment shuld be in consyence a good barre of  
 the taylor / but yf the sayde feoffemēt a gyfte  
 had ben made i cōsyderacyon of any recom-  
 pēce of money or for any mattymony or su-  
 che other / then the feoffement of the sayde  
 John at noke shulde not bynde his heyre / &  
 yf he then suffred any recouerye therof: than  
 that recouerye shuld be of lyke effecte as o-  
 ther recoueryes wherof We haue treatyd by-  
 fore / and the Whiche I sayd it was good to  
 fauour rather for theyr multytude then for  
 the consyence: and the same lawe is that yf  
 the sone and the heyre of the sayde John at  
 noke in case that the sayd gyfte was made  
 Without recompence alven the lande for po-  
 uertye after the deth of his father that reco-  
 uerye byndeth not but as other recoueryes  
 do / for it can not be thought that the entent  
 of the father was that any of his heyres in  
 taylor shulde for any necessitye dysberye all

other heyres in tayle that shulde come after hym / but for hym selfe me thynketh it is reasonable to Judge in suche maner as I haue sayde byfore. ¶ Student And though the intent of the sayde John at noke When he made the sayde feoffement / and When he took agayn the sayd gyfte in tayle : Were that yf he fell in nede that he myght alyen: yet I suppose that he may not alyen though per case for the more suertye he declared his intent to be suche vpon the lyuerpes of season: for that intent was contrary to the gyfte that he frelye took vpon hym: and When any intent or condycyon is declaryd or reseruyd agaynst the state that any man maketh or accepteth: then suche an intent or condycion is voyde by the law as by a case that herafter foloweth wyll appere / that is to say yf a man make a feoffement in fee vpon condycyon that the fesse shall not alyen it to any man that condycyon is voyde / for it is incydent to euery state of the fee symple that he that is so seasyd may alyen. And lyke as in a fee symple there is incydent a power to alyen / so in a state tayle there is a secreete intent vnderstande in the gyfte / that no alienacyon shal be made. And therefore though

The. xxix.

the intent of the sayd John at noke Were yf  
yf he fell in to pouertie that he myght sell: &  
though he at the takynge of the gyfte open-  
lye declaryd his intent to be so / yet that in-  
tent shulde be voyde by the laWe as me se-  
myth / and yf it be voyde by the laWe it is  
also voyde in conseyence / and so the sayde  
recoverye must be taken in this case to be of  
the same effecte as recoveryes of other lan-  
des untayled be / and in none other maner.

The. iiii. questyon of the Student / con-  
cernynge recoveryes of enherytaunce  
entayled. The. xxx. Chaptye.

**S**tudent) Yf an annuyte be graun-  
tyd to a man to haue and to percey-  
ue to the graunte and to the heyres  
of his body of the cofers of the grauntoure.  
And after the grauntee sufferyth a recouere  
agaynst hym in a Wyttre of entre by the na-  
me of a rent in dale of lyke sūme as the an-  
nuyte is of With Vouchers and iugemēt af-  
ter the cōmon course / and bothe partyes iten-  
de that that annuyte shalbe recoveryd: Whe-  
ther shal that recouere bynde the heyre in the  
tayle of this annuyte. (Doctour) What yf

It Were a rent goynge oute of lāde of what  
effect shuld the recouere be then. ¶ (Student)  
It shulde be then of lyke effecte as ys it We  
re of lande. ¶ (Doctoure) And so it semyth  
to be of this annuyte / for as me thynketh a  
rent & an annuyte be of one effecte / for the  
one of them shall be payde in redye money  
as the other shall. ¶ (Student) that is trouth  
and yet ther be many great dyuersytyes by  
twyxt them i the law. ¶ (Doctour) I pray  
the shew me som of tho dyuersities. ¶ (Stu  
dent) parte I shal shew the / but I dot not  
Whether I can shewe the all / but fyrst thou  
shalt vnderstande that one dyuersitye is  
this. Euery rent be it rent seruyce / rent char  
ge / or rent seke / is goynge out of lande / but  
an annuyte goth not out of any lande / but  
chargeth only the person: that is to saye the  
grauntoure or his heyres that haue assezt by  
dyscent / or the house ys it be grauntyd by  
a house of Relygion to perceyue of theyr co  
fers. Also of an annuyte ther lyeth no accy  
on but onlye a Wrytte of annuyte agaynst  
the grauntour his heyres or successours / and  
that Wryt of annuyte lyeth neuer agaynst  
the pernoure: but onlye agaynst the graun  
tour or his heyres / but of a rent the same ac

The. xxx.

eyons may lye as do of lande as the case re-  
 quyreth: & it lyeth somtyme of rent agaynst  
 the tenaunt of the grounde / and somtyme  
 agaynst the pernour of the rent / that is to  
 say agaynst hym that takyth the rent wro-  
 gfully / and somtyme agaynst neyther: as of  
 a rent seruyce assyce may lye for the lord a-  
 gaynst the mesne and a dyssefour / or som-  
 tyme agaynst the mesne only yf he dyd also  
 the dysseason. Also an annuyte is neuer ta-  
 ken for an asses bycause it is no fre holde  
 in the lawe / ne it shall not be put in execu-  
 cyon vpon a statute merchaut / statute sta-  
 ple ne elegit as rent may. And bycause the  
 sayd Wryt of entre lay not i this case of this  
 annuyte. And that it can not be intedyd in  
 the lawe to be the same annuyte / though it  
 be of lyke sume With the annuyte: ne though  
 the parties assentyd and ment to haue the  
 same annuyte recoueryd by the sayd Wrytte  
 of entre / therefore the sayd recouerye is voyd  
 in lawe and consyence / but yf suche a re-  
 couerye be had of rent With a Voucher ouer  
 then it shall be taken to be of lyke effecte as  
 recoueryes of landes be in suche maner as  
 we haue treatyd of byfore.

**¶ The. v. questyon of the Student /  
concernynge tyled landes.**

The. xxxi. Chapytre.



**¶ Student)** Yf landes be  
gyuen to a man and to  
his Wyfe in the name of  
his ioyntoure by the fa-  
ther of the husbonde to  
haue & to holde to them  
and to the heyr; of theyr  
t wo bodyes begotten / and after they haue  
yssue and the husbonde dyeth: and the Wyfe  
alyenyth the lande / and agaynst the statut  
of. vi. h. vii. sufferyth a recouerye therof to  
be had agaynst her to the vse of the byer / &  
after her sone and heyre apparaunt / that is  
heyre to the tyle releasyth to the recouerers  
by fyne and dyeth haupnge a brother on ly-  
ue / & after the mother dyeth who hath ryght  
to that lande the byer or the brother of hym  
that releasyd. **¶ Doctoure)** What is thyne  
oppynyon therin / I praye the shewe me.  
**¶ Student)** me semyth that the byer hathe  
ryght / for by the sayd statut made in the. vi.  
yere of kynge Henry the. vii. amonge other  
thynges it is enacted that yf any woman /

Dyaloge.

t. i.

The. xxxi.

Whiche hath the landes of the gyfte of her hus-  
bonde / or of the gyfte of any of the aunces-  
stoures of the husbonde / suffre any recoue-  
rye therof agaynst her by couyn / that then  
suche recouerye shall be voyde / and that it  
shal be lawfull to hym that shuld haue the  
lande after the deth of the woman to entre  
and it to holde as in his fyrste ryght / prou-  
ded alway that that statute shall not exten-  
de where he that shuld haue the lande after  
the deth of the woman is agreeable to any su-  
che alienacyon or recouerye: so that / that ag-  
reement be of recorde. And for as moche as  
the heyre in this case agreed to the sayd reco-  
uerye by fyne / whiche is one of the hyst re-  
cordes in the lawe / it semyth that the byer  
hath ryght agaynst that heyre that agreed  
and agaynst all that shall be heyres of the  
taylor / and that not only by the sayd recou-  
erye / but also by the sayd statute wherby the  
sayd recouerye with assent of the heyre is af-  
fermyd. ¶ Doctour though the byer in this  
case haue ryght durynge the lyfe of the hey-  
re that releasyd / yet neuerthelesse after his  
deth his heyre as it semyth maye lawfully  
entre / for the agrement wherof the statut spe-  
keth must as I suppose eyther be had byfor

re the recouerye / or els at the tyme of the reco-  
uerye: for yf a tytle by reason of the sayd sta-  
tute be ones deuolute to the heyre in the taye  
le / then that right as it semyth can not be ex-  
tynct nor put a way by the only fyne of the  
heyre / no more than yf he had dyed and the  
nexte heyre to hym had releasyd to the byer  
by fyne / in whiche case that release coulde  
not extyncte the ryght of the taylor / nor the  
ryght of entre that is gyuen by the statute /  
as so as me semyth his nexte heyre may ther-  
fore entre. ¶ Student) as I perceyue all thy  
dowte is in this case bycause the assent of  
the heyre was after the recouerye / for yf it  
hadde ben at the tyme of the recouerye as yf  
the heyre had ben vouched to Warrantye in  
the same recouerye and he had enterryd: and  
therupon the Iugement had be gyuen thou  
agrest wel / that that recouerye shuld haue  
auoydyd the taylor for euer. ¶ Doctour) that  
is true for it is in the expresse wordes of the  
statute / But when the assent is after the re-  
couerye / then me thynketh it is not so / ne  
that the ryght of the fyrst taylor / which was  
reuyued by the sayd statute shall not be ex-  
tyncte by his fyne / no more then it shall in  
other tayles. ¶ Student) I Wyl be aduys

The. xxxi.

sed Vpon thy oppynyon in this mater / But  
yet one thyng Wolde I moue fether Vpon  
this statute and that is this. Some say that  
by this statut all other recoueryes that haue  
ben had / ouer and besyde these recoueryes of  
Joyntoures be affermyd / for they say that  
syth the Parlyamēt at the makynge of this  
statute / knewe Well that many other reco/  
ueryes Were the Used & had to defete tayles  
and that it Was lyke that they Wold so con/  
tynue / Whiche neuertheses the Parlyament  
dyde not prohybte for the tyme to come as  
it dyde the sayde recoueryes of Joyntoures:  
that it is therfore to suppose y<sup>t</sup> they thought  
that they shulde stande With laWe and con/  
scyence: but by cause Joyntures Were made  
rather for the sauynge of the Inherytaunce  
of the husbonde / then to dystroy the Inhery/  
taunce / they saye that the Parlyament tho/  
ught and aduugyd the alyenacyons and re/  
coueryes of such Joyntoures to be agaynst  
the laWe and cōscyence and not the alyena/  
cyō of other lādes entayled / for yf they had  
they say / that the Parlyament Wolde haue  
aduoyded recoueryes of tayled landes gene/  
rally as Well as it dyd of recoueryes of ioynt/  
oures. (Doctour) as to that oppynyon I

Wyll answereth thus for this tyme / that  
though that the makers of the sayd estatute  
only put a way recoveryes of ioyntoures / &  
not other recoveryes that yet it can not be ta  
ken therfore that they entent was that the  
other recoveryes shuld stande good and per  
fyte / for they speke then only of ioyntoures  
bycause there was no complaynte made in  
the Parlyament at that tyme / but agaynst  
recoveryes had of ioyntoures / and therfore  
it semyth that they intendyd nothyng con  
cernyng other recoveryes: but y<sup>e</sup> they shuld  
be of the same effecte as they were byfore &  
no other wyse. And that wyll appere more  
playnlye thus / though the makers of the  
sayd estatute intendyd to put a waye & ad  
null suche recoveryes as shulde be made of  
ioyntoures after a certayne daye lymytted  
in the statute / that yet they intendyd not to  
aduoyde ne afferme such recoveryes of ioynt  
oures as were passed byfore that tyme: & yf  
they intendyd not to auoyde ne afferme the  
recoveryes had of ioyntour; byfore y<sup>e</sup> tyme:  
then howe can it be taken that they intendyd  
to put a waye or afferme other recoveryes  
that were passed byfore that tyme and not  
of ioyntoures / that wolde not afferme ne

The. xxxvii.

put a Way recoueryes passed of ioyntoures  
byfore that tyme. And so as it semyth they  
intēdyd to spare the multytude of them that  
were passyd of bothe & not to comfote any  
to take them after that tyme. ¶ Student) I  
am cōtent thy oppynyon stande for this tyme  
me/and I Wylle aske the another questyon.

The. vi. questyon of the Student/  
concernynge taysed landes.

The. xxxvii. & happytre.



Student) Yf tenaunt in taye  
se be dysseasyd / & dye & an  
Auncestre collaterall to the  
heyr i the taye release With  
a Warrantye & dye / and the  
Warrantye descēdyth vpon the heyre in the  
taye / Whether is he therby barred in conscy  
ence / as he is in the law. ¶ Doctour) Bycau  
se oure pryncypall intent at this tyme is to  
speke of recoueryes and not of Warranties:  
and also bycause it hath ben of longe tyme  
taken for a pryncypall maxym of the lawe  
that it shulde be a barre to the heyre as well  
that claymeth by a fee symple as by a state  
taylor / and for that also that it was not put

aWaye by the sayd statute of Westm. the. ii.  
Whiche ordayned the taylor I wyll not at  
this tyme make the answere therin / but  
wyll take a respyte to be aduysed. ¶ Stu-  
dent then I pray the yet or we depte she we  
me what was the most principall cause yt  
moued the to moue this questyon of recou-  
ries had of taylor lades. ¶ Doctour This  
moued me therto / I haue perceyued many  
tymes that there be many dyuers oppynyōs  
of those recoueries: Whether they stāde with  
conscience or not / and that it is to dowte  
that many persones ren in to offence of con-  
science therby. And therefore I thoughte to  
felic thy mynde i them whether I coulde per-  
ceyue that it were clere / that they scrupd to  
brike the taylor in lawe & conscience / or that  
it were clerely agaynst conscience so to brie-  
ke the taylor / or that it were a mater in do-  
wte / & yf it apperyd a mater in do wte / or that  
it apperyd that the mater were vsed clerely  
agaynst conscience / then I thoughte to do  
som what to make the mater appere as it is  
to the intent: that they that haue the redde &  
the charge ouer the people as well the spyr-  
tuall men as temporall men / shulde the ra-  
ther endeuer them to se it reformed for the co

The. xxxviii.

mony Welth of the people / as Well in Bodye  
as in soule . For When any thyng is Used  
to the dyspleasure of god / it hurtyth not on-  
ly the body but also the soule. And tempo-  
rall rewders haue not onely cure of the bo-  
dyes / but also of the soules / & shall answe-  
re for them yf they peryshe in theyr defeaute:  
& bycause it semyth by the more apparaunt  
reason that the tayles be not broken ne ful-  
ly auoyd by the sayde recoueryes / & that  
yet neuertheles the great multytude of them  
that be passed is ryght moche to be pōderyd  
Therefore it Were Very good to prohybye  
theym for tyme to come / to put a waye su-  
che ambyguytes & doctes as ryse nowe  
by occasyon of the sayde recoueryes / and so  
they be but as snares to deceyue the people /  
and so wyll they be as longe as they be suf-  
feryd to contynue. And me thynketh Very-  
ly that it Were therefore ryght expedyēt that  
tayed landes shulde from hensforth eyther  
be made so stronge in the lawe that the tay-  
le shulde not be broken by recouerye fyne  
With proclamacyon collateral Warrantye  
nor other wyse / or els that all tayles shulde  
be made fee simple / so that euery man that  
lyste to selle his lande myght selle it by his

bare feoffemēt and without any scruple or  
 gruge of cōscience: and then there shuld not  
 be so great expences i the lawe: nor so great  
 variaunce amōge the people: ne yet so great  
 offence of conscience as there is now in  
 many persons. ¶ (Student) Veryly me thyn  
 keth that thy oppynyon is ryght good and  
 charytable i this behalfe. And that the red  
 lers be bounde in conscience to loke well  
 vpon it to se it reformed and brought in to  
 good ordre. And Veryly by that thou haste  
 sayde therin thou haste brought me in to re  
 membraunce that there be dyuerselyke sna  
 res concernynge Sperrytuall matyers suf  
 fred amonge the people / Wherby I do wte  
 that many Sperrytuall redlers be in great  
 offence agaynst god. As it is of that poynt  
 y<sup>t</sup> the sperrytuall men haue spoken so moche  
 of that preestes shulde not be put to answe  
 re byfore lay men specially of felonyes &  
 murders / and of the statute of. xl. E. iii.  
 the. iii. chapytre / Where it is sayd that a pro  
 hybicyon shall lye / Where a man is sued in  
 the Sperrytuall courte for tythe of wood /  
 that is aboue the age of. xx. yere / by the na  
 me of Silua cedua as it hath done byfore /  
 and they haue in open Sermons and in dy

uerse othter open cōmunicacyons & couns  
 saylles caused it to be openly notesyed and  
 knowen that they shuld be al accursed that  
 put pcestes to answere / or that maynteyn  
 ne the sayd estatute / or any other lyke to it.  
 And after When they haue ryght well per  
 ceuyed that not Withstandyng all that they  
 haue done therin / it hath ben vsed in the sa  
 me poyntes through all the Realme in lyke  
 maner as it Was byfore. Then they haue  
 sytte styll and lette the mater passe / and so  
 When they haue brought many persones in  
 great daunger / but moste specyallye them  
 that haue gyuen credence to theyr sayinge /  
 and yet by reason of the olde custome haue  
 done as they dyd before / then there they ha  
 ue lefte them / but Verply it is to feare that  
 there is to them selfe ryght great offēce ther  
 by / that is for to say to se so many i so great  
 daunger as they saye they be. And to do no  
 more to brynge them out of it then they ha  
 ue done / for yf it be trewe as they saye / they  
 ought to stycke to it With effect in all chary  
 tye tyll it Were reformed: And yf it be not  
 as they say then they haue caused many to  
 offende that haue gyuen credence to theym /  
 and yet contrarpe to theyr owne conscyence

do as they dyd byfore / & that percase shulde  
not haue offendyd yf suche sayings had not  
ben. And so it semyth that they haue in the  
se matyers done eyther to moche or to lytel.  
And I beseeche all myghtye god that some  
good man may so call vpon all these ma-  
tyers that we haue now comonyd of / so  
that they that be in Auctorytie maye som-  
what ponde them / and to ordre them in su-  
che maner that offence of consyence growe  
not so lyghly therby hereafter as it hath do-  
ne in tyme paste. And verily he that on the  
Crosse knewe the pryce of mānes soule wyl  
hereafter aske a right strayte accōpte of red-  
ders / for eery soule that is vnder them and  
that shall peryshe thowgh they defaulte.

ADDYCYON.

Thus I haue shewed vnto the in this  
lytle Dialoage howe the lawe of Englan-  
de is grounded vpon the lawe of reason /  
the lawe of god / the generall customes of  
the realme / and vpon certayne pryncples  
that be called maxyimes vpon the particu-  
ler customes vsyd in dyuerse Cyties & coun-  
tries / and vpon statutes whiche haue ben  
made in dyuerse Parlyamentes by our so-  
ueraygne lord the kynge and his progeny /

The. xxxii. chapytte.

toures / and by the Lordes spyrytuall and  
temporall / and all the Lōmons of the re/  
alme . And I haue also shewed the in the  
nyneth chapytre of this boke / Under what  
maner the sayd general customes and max/  
ymes of the lawe may be prouyd and affer/  
myd yf they were denyed / and dyuers other  
thynges be conteyned in this present Dya/  
loge / Whiche Wyl appere in the table / that  
is in the latter ende of the boke / as to the re/  
ders Wyl appere . And in the ende of the  
sayde dialoge I haue at thy desyre shewed  
the my conceyte concernynge recoueryes of  
Tayled landes / and thou haste vpon the  
sayd recoueryes shewed me thynne oppyny/  
on. And I beseeche our lord set them shorthe/  
lye in a good clere waye / for surelye it Wyl  
be ryght expedient for the well ordyng of  
Conscience in many persones that they be  
so. And thus god of peas & loue be al waye  
With vs. Amen. 15 JY 55

Here endeth the fyrste Dialoge in En/  
glysshe / With new Addycyons betwixt  
a Doctoure of Dypynyte / and a Stu/  
dent in the lawes of Englande.

And here after foloweth the Table.

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**I**mprynted by me Robert wyer  
dwellynge at the sygne of saynt  
Johñ Euangelyste, in saynt  
Martyns paryllhe/beside  
Charyngcrosse, in the Byf  
shop of norwych rentes.



**ROBERT & WYER**

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